

1           UNCERTIFIED ROUGH DRAFT

2           MR. WERTHEIMER: William Wertheimer on  
3    behalf of the Flowers Plaintiffs.

4           I would like to put on the record the fact  
5    that the order that Judge Rhodes entered under which  
6    we're conducting this and the other state  
7    depositions provides at Paragraph 7 that the state  
8    would complete its document production by October 5  
9    provided the parties could mutually agree to extend  
10   that date.

11           That date has not been extended by  
12   agreement. As late as last night at 10:15 I woke up

13      this morning to find that the state had produced a  
14      fourth production that is not in compliance with the  
15      order. I want to make clear on the record that we  
16      may take the position that we may need to continue  
17      the governor and the other state's depositions after  
18      we have reviewed those documents as we have not  
19      looked at any of those documents as of now.

20           MS. NELSON: This is Margaret Nelson on  
21      behalf of the state. The fourth production of  
22      documents was made under the state's continuing  
23      obligation to supplement its discovery responses.  
24      So the fact that our production was completed by the  
25      fifth pursuant to the court order is irrelevant to

1 the fact that we have an ongoing duty to supplement,  
2 and that was the purpose for the additional document  
3 production yesterday.

4 MR. WERTHEIMER: I'll leave further  
5 argument for later.

6 VIDEO TECHNICIAN: Today's date -- hold on.

7 I have to start over again. Give me a second.

8 (A pause was had in the proceedings.)

9 Today's date is October 9th, 2013 and we're

10 on the record at 8:42 a.m. This is the video

11 deposition of Governor Richard Snyder. We're at the

12 Romney office building, 111 South Capitol Avenue in

13       Lansing, Michigan.

14                Could the report administer the oath to the

15       Governor, please.

16   sworn sworn.

17   BY MS. LEVINE:

18   Q.   Good morning Governor.

19   A.   Good morning.

20   Q.   My name is Sharon Levine. I'm with the law firm of

21       Lowenstein Sandler. I'm here on behalf of AFSCME

22       and we a appreciate you appearing for your

23       deposition today.

24                Just for the record when did you take

25       office as Governor of the state of Michigan?

1 A. January 1, 2011.

2 Q. And at the time you took office, was the state

3 providing greater financial -- a greater level of

4 financial support to the city of Detroit than it is

5 today?

6 A. I would have to check that.

7 Q. Would you be willing to support having the state

8 provide a greater level of financial support than it

9 is today in order to help the city of Detroit with

10 its plan of adjustment and particularly in order to

11 help fund the pension issues?

12 A. In terms of we have many competing interests for the

13 state of Michigan with respect to our budget. I

14 don't make those decisions by myself. It goes

15 through the legislature and the governor.

16 Q. My question would you support an additional level of

17 support?

18 A. I said I've been supportive of improved services for

19 citizens, not necessarily the repayment of debts.

20 Q. That might have been responsive so I don't mean to

21 be argumentative but the now question is would you

22 support an additional level of support for Detroit

23 in order to help deal with the so-called under

24 funding pension issue?

25 MS. NELSON: Asked and answered. Go ahead.

1 THE WITNESS: Oh. I view that as a --  
2 that's a question that I couldn't answer because  
3 it's a hypothetical. It would depend on the entire  
4 situation for the facts depending on the potential  
5 plan of adjustment for the debts.

6 BY MS. LEVINE:

7 Q. Well, between March 28, 2013 and June 14, 2013 did  
8 you ever discussions with Kevyn Orr about a business  
9 plan or a restructuring plan or a redevelopment plan  
10 for the city of Detroit?

11 A. Kevyn Orr was building a plan for creditors they  
12 presented in June of this year.

13 Q. Did you have discussions with him with regard to

14 that plan before the June presentation?

15 A. I had discussions that would have been subject to

16 attorney-client privilege.

17 Q. Is it your understanding that that plan includes a

18 two billion dollar note for unsecured creditors?

19 A. Yes.

20 Q. And what's your understanding of what that plan

21 includes with regard to vested pension benefits for

22 the citizens of Detroit?

23 A. The proposal includes some portion of that note

24 being allocated towards pensioners.

25 Q. So the plan does not include just leaving the vested



1 pension benefits alone, does it?

2 A. Well, with respect to the funded piece of pension

3 plans, that's available. There's an open question

4 with respect to the unfunded portion.

5 Q. Do you understand that in a Chapter 11 corporate

6 bankruptcy case that the pension benefit guarantee

7 corporation or the PBGC provides federal insurance

8 for beneficiaries of a pension if a defined benefit

9 plan is terminated?

10 A. Yes.

11 Q. And is it your understanding that in a chapter nine

12 bankruptcy case there is no similar protection for

13       vested pension benefits?

14 A.    Yes.

15 Q.    What's your understanding of how the Detroit

16       citizens, the AFSCME retirees, will support

17       themselves assuming that there's a diminution in the

18       current level of pension benefit provided?

19 A.    Could you clarify your question because you had

20       conflicting statements. You asked about the

21       citizens of Detroit and then you asked about the

22       retirees.

23 Q.    Well, let's go with the retired citizens of Detroit

24       first.

25       To the extent that their pensions are

1       diminished and there is no PBGC or federal  
 2       protection for them, what's your understanding under  
 3       the plan of -- the proposed plan how they will  
 4       support themselves?

5               MS. NELSON: Objection; calls for  
 6       speculation, form, foundation.

7               THE WITNESS: Given that we're in the  
 8       chapter nine process there's been no plan presented  
 9       at the time.

10 BY MS. LEVINE:

11 Q.   We already had a little bit of a discussion that  
 12       you're aware of plan that was presented to creditors

13 in June of 2013, correct?

14 A. That was part of going through a process from the

15 city of Detroit asking its creditors for good faith

16 negotiations.

17 Q. Right. And under that plan to the extent there was

18 an under funding with regard to the pensions there

19 was going to be some change made to the pension

20 benefits, correct?

21 A. That would depend on mutual agreement between the

22 party.

23 Q. Well, assuming that there is a reduction for the

24 moment in pension benefits, have you had any

25 conversations with Kevyn Orr with regard to whether

1 or not there would be any other benefit or provision  
2 made to the retirees of the city of Detroit that  
3 were going to lose pension benefits as a result of  
4 that plan.

5 A. Those discussion would have been subject to  
6 attorney-client privilege..

7 Q. What's your understanding of options that are  
8 available to the city of Detroit?

9 A. Well, again we're in bankruptcy now so there's been  
10 no plan presented by the city at this point in time  
11 so that's a hypothetical.

12 Q. Do you believe it's fair to have the bankruptcy

13 attorney and other bankruptcy professionals paid

14 ahead of retirees in connection with the chapter 9

15 process?

16 A. I view that as a legal matter because that's a

17 subject matter of how chapter nine bankruptcies

18 work.

19 Q. The question I was asking was whether or not you

20 believe it's fair. I'm not asking you whether or

21 not it's a legal matter?

22 A. Well, I view it as just speculation on my part

23 because we're in chapter nine, so that would be part

24 of the legal process.

25 Q. Is it your understanding that the wall street

1 creditors municipal bond holders will share in this  
2 2 billion dollar note alongside of the retirees with  
3 regard to their unsecured claims?  
4 A. Again, there has been no plan presented in  
5 bankruptcy, so that would be a hypothetical. If you  
6 go back to proposal of the creditors, that was to be  
7 part of good faith negotiations and there was an  
8 attempt to do that, so that would have been all been  
9 consensual.

10 Q. Do you believe it's fair to pay Wall Street type  
11 municipal bond creditors ahead of retirees?

12 A. Again that's part of the mutual negotiations that

13        were part of the proposal for creditors.

14 Q.    Prior to the time that Detroit filed for bankruptcy,

15        is it your understanding that house speaker Bolger

16        had any involvement or discussions with Kevyn Orr

17        with regard to the bankruptcy filing?

18 A.    I don't recall.

19 Q.    Did he have discussions with you with regard to the

20        bankruptcy filing?

21 A.    In terms of speaking to speaker Bolger, occasionally

22        I would give updates on what was going on with the

23        city of Detroit.

24 Q.    And did he express any views with regard to the

25        chapter nine filing?



1 A. Not that I recall.

2 Q. Did you have any conversations with Randy

3 Richardville prior to the chapter nine filing?

4 A. It would be the same with speaker Bolger that as

5 part of the normal process I would give updates on

6 where the situations stood.

7 Q. Do you have any recollection of what he said to you

8 with regard to those updates?

9 A. No.

10 Q. On or about July 18 when you authorized Detroit's

11 chapter nine filing, what he was under understanding

12 of the dollar amount of the pension obligations that

13 were under funded?

14 A. It would be in the approximate three and a half

15 billion dollar range based on the financial

16 statements.

17 Q. What was your source of under funding figure? When

18 you say financial statements, what financial

19 statements are you referring to?

20 A. The statements that would have been provided by the

21 city of Detroit. That would have been included in

22 the review team report.

23 Q. As we sit here today, do you -- is it your

24 understanding that that number is still the number

25 that you're working with?

1 A. My understanding is that there's been further work  
2 done by actuaries and consultants that have come up  
3 with differing numbers.

4 Q. And as you sit here today, what is your  
5 understanding of what under funding obligation is  
6 with regard to the Detroit pensions?

7 A. Potentially these other reports could say the under  
8 funded amount was significantly larger.

9 Q. And by significantly larger do you have a dollar  
10 figure or an estimate that you could give us?

11 A. I wouldn't want to speculate. That's known in the  
12 report.

13 Q. And what reports specifically are you referring to?

14 A. I believe there's a report that Kevyn Orr had

15 commissioned with respect by actuaries to assess the

16 Detroit pension plans.

17 Q. And were those actuaries Milliman?

18 A. I believe so.

19 Q. Do you recall the date of the report?

20 A. No.

21 Q. Was it commissioned after the chapter nine filing?

22 A. Again, I didn't -- I was not partaking in the

23 commissioning of the plan itself. You'd have to ask

24 Kevyn Orr.

25 Q. Are you familiar with the litigations specifically

1 three lawsuits commenced on or around July 3, 2013  
2 challenging the constitutionality of the appointment  
3 of the emergency manager and/or certain aspects of  
4 the emergency manager law PA 436?

5 A. Generally yes.

6 Q. During the period from July 3 to July 18 did you  
7 follow this litigation?

8 A. To some degree.

9 Q. Did there come a point in time between July 3 and  
10 July 18 that you learned that Kevyn Orr was putting  
11 together a request for authorization to file  
12 bankruptcy for Detroit?

13 A. That would have been subject to attorney-client

14 privilege.

15 Q. Well actually I'm asking you your understanding and

16 not anything that you've discussed with your

17 lawyers. I'm asking you your understanding of

18 whether sometime between July 3 and July 18 you

19 learned that Kevyn Orr was putting together a

20 request for authorization to file Detroit's chapter

21 nine petition?

22 A. He was considering a chapter nine request to me.

23 Q. Do you recall when you first learned that he was

24 considering a chapter nine request to you?

25 A. It would have been sometime between those dates. I

1       don't recall what specific date.

2 Q.   But it was sometime between July 3 and July 18?

3 A.   It would have been closer to the 18th.

4 Q.   And the request came to you on July 16; is that

5       correct?

6 A.   Yes.

7 Q.   Did you ask Kevyn Orr to send you that request?

8 A.   I left it to Kevyn Orr to make the decision.

9 Q.   At the time that you received the request, did you

10       agree with the request for the authorization?

11 A.   I wanted to review the request.

12 Q.   On July 16 was it your understanding that the file

13 state court lawsuits, the so-called Flowers and

14 Webster litigations were requesting injunctions

15 against among other things your authorizing the

16 chapter nine filing?

17 A. Yes.

18 Q. Did you believe that if the injunctions were granted

19 it would have interfered with Kevyn Orr's efforts at

20 restructuring Detroit?

21 A. I didn't consider that.

22 Q. You didn't consider at all the impact of whether or

23 not injunctions issued in those lawsuits would

24 impact the restructuring effort made by Kevyn Orr?

25 A. My concern was is when I received a request form



1 Kevyn I wanted to make sure I appropriately reviewed  
2 that request and in a thoughtful fashion and  
3 responded appropriately was my primary concern.

4 Q. Was one of the criteria you used in your thoughtful  
5 deliberation the status of those pending  
6 litigations?

7 A. Not with respect to injunctions but with respect to  
8 the sheer fact of many cases of litigation were  
9 going on and that we were ending up in potentially  
10 many different courts over many issues that could go  
11 beyond the scope of just those lawsuits.

12 Q. So it's your testimony that you -- that although you

13 took into account the volume of litigation, you did

14 not take into account the impact of the injunctions

15 which were being sought in those particular

16 litigations?

17 A. I view those as speculative and those are common

18 requests in many lawsuits.

19 Q. Changing topics for a minute. NERDs, is that an

20 acronym for new energy to reinvest diversity fund?

21 A. Yes.

22 Q. Do you know who the donors are to the NERDs fund?

23 MS. NELSON: Objection; outside the scope

24 of the protective order and the eligibility

25 objections for purposes of this deposition.

1 MS. LEVINE: You can answer.

2 MS. NELSON: No, he can't answer. It's

3 outside the protective order and the scope of this

4 deposition.

5 MS. LEVINE: How is it outside the

6 perspective order?

7 MS. NELSON: The protective order limits

8 the scope of the deposition to the issues identified

9 in the eligibility objections, and there's nothing

10 in AFSCME's eligibility objections related to the

11 NERD fund or specifically the donors to the NERD

12 fund.

13 MS. LEVINE: Okay. Well I'm going to run

14 through my questions for the record and if at the

15 end of the series of questions on the NERDs funds

16 your position is the same, then we can have the

17 Governor not answer, but for the record since we

18 only have three hours I'm going to go through it.

19 BY MS. LEVINE:

20 Q. Do you know who any of the donors are.

21 MS. NELSON: Same objection.

22 MS. LEVINE: Was Kevyn Orr a donor.

23 MS. NELSON: Same objection.

24 BY MS. LEVINE:

25 Q. Is Jones Day a donor?

1 A. (No response.)

2 Q. Do you know if any of the retained professionals by

3 the city of Detroit either the firms or the

4 individuals are donors or any of the creditors of

5 Detroit donors or any of the SWOP parties donors?

6 Would be willing to produce those names? If it's

7 not within your control would you be willing to ask

8 NERDs to produce those names?

9 A. (No response.)

10 Q. Do you know if any of the emergency managers costs

11 or expenses are being paid for or reimbursed by the

12 NERDs fund? Do you know if NERD made any other

13 payments to or on behalf of Kevyn Orr?

14 Do you know if any of the NERDs donors also

15 made political contributions to your campaign? If

16 so, who and how much? Do you know if any of the

17 NERDs donors also contributed to the campaign

18 against PA 4 and, if so which donors were those?

19 Is it still the state's position that this

20 is unrelated to eligibility?

21 MS. NELSON: Yes. Unless you can identify

22 specifically the objections in your eligibility

23 statement that they relate to.

24 MS. LEVINE: It's good faith. It goes to

25 good faith and it goes to conflict of interest with

1 regard to good faith.

2 MS. NELSON: In what context?

3 MS. LEVINE: Well I'm not going to use my

4 three hours to have that --

5 MS. NELSON: No, I understand that. I

6 don't believe that it is -- if you'll let me confer

7 with my client, I'll ask him.

8 MS. LEVINE: I've learned how to use my

9 timer so that's good. My daughter taught me that.

10 VIDEO TECHNICIAN: Going off the record

11 then?

12 MS. LEVINE: Yes. Yes.

13 VIDEO TECHNICIAN: Off the record 8:58 a.m.

14 (A brief recess was taken.)

15 VIDEO TECHNICIAN: We are back on the

16 record at nine a.m.

17 MS. NELSON: I've conferred with my client

18 and in the spirit of cooperation and to move these

19 proceedings along, he's agreed to respond to your

20 questions and can do so fairly quickly.

21 THE WITNESS: Yeah, with respect to your

22 questions as to who the donors were and that

23 category of questioning, my answer would be I don't

24 know. There's an independent board that does that

25 work.



1           With respect to the question of expenses,  
 2           Kevyn Orr's agreement is such that some of his  
 3           expenses can be reimbursed by the NERD fund because  
 4           it was created to offset the burdens of government  
 5           and does similar things such as press auditorium  
 6           upgrades, help with expenses for travel.

7 BY MS. LEVINE:

8 Q.   Do you know whether or not the NERD fund contributed  
 9       to the campaign against PA 4?

10 A.   I don't know.

11 Q.   Or in favor of PA 4?

12 A.   I don't know.

13 Q. Did you prepare for today's deposition?

14 A. I had time with my counsel.

15 Q. And who was that counsel?

16 A. The fine group you're seeing on the other side of

17 this table.

18 Q. Just because we have a transcript and I don't know

19 if everybody's going to be seeing the videotape, but

20 the lawyers aren't on the videotape. So for the

21 record could you just give the names of the

22 attorneys?

23 A. Yeah. My attorney Margaret, who has already been

24 identified; Matthew Schneider and Mike Gadola and

25 Peter Ellsworth.

1 Q. Did you also meet where with attorneys for the city  
2 of Detroit to prepare for today's deposition?

3 A. No.

4 Q. Did you review any documents to prepare for today's  
5 deposition?

6 A. Yes.

7 Q. And what documents did you review?

8 MS. NELSON: Objection. That's privileged  
9 and work product.

10 BY MS. LEVINE:

11 Q. Are you directing the witness not to answer?

12 A. Yes.

13 Q. Was anybody else present at any of the meetings that

14 you had to prepare for the deposition besides you

15 and your counsel?

16 A. No.

17 Q. Is it your understanding the Kevyn Orr was appointed

18 emergency manager effective March 28, 2013?

19 A. I don't recall the specific date but it sounds like

20 you have that.

21 Q. Do you recall whether or not Kevyn Orr was appointed

22 in or around March of 2013?

23 A. Yes.

24 Q. Is it your understanding that PA 436 became

25 effective in or around March of 2013?

1 A. Yes.

2 Q. Is it your understanding that PA 436 was enacted in

3 December of 2012?

4 A. Yes.

5 Q. Is it your understanding that PA 4 was struck by

6 voter referendum in November of 2012?

7 A. Yes.

8 Q. Are you familiar with press coverage that indicates

9 that there's some sentiment that PA 436 was

10 criticized as a dictatorship or take over mechanism

11 when it was enacted?

12 A. I'm aware there were many comments with respect to

13 many pieces of legislation.

14 Q. I'm asking specifically about those comments with

15 regard to PA 436?

16 A. Yes.

17 Q. Did you have any involvement in bringing PA 436 into

18 law?

19 A. Yes.

20 Q. What was your understanding of the purpose of PA

21 436?

22 A. It was to be responsive to the voters to actually

23 approve on a process that goes back a very long

24 time. It goes back to 1988 originally, that in 1990

25 public act 72 came into law under governor

1     Blanchard. That was emergency manager law that was  
2     in effect for a very long time had been utilized by  
3     several prior governors.

4   Q.   So was --

5   A.   Then beyond -- excuse me. Public act 72 came into  
6     place and was used for quite a few years including  
7     my predecessor who had appointed a number of the  
8     emergency managers that were in place when I took  
9     office.

10       Following public act 72, I thought it was  
11     important to make improvements to public 72 because  
12     it had two major challenge points. One, emergency

13 managers could be in place for too long, and there  
14 was no early warning system to help avoid ever  
15 needing an emergency manager. So public act 4 was  
16 an improvement on public act 72 within an early  
17 warning system again --

18 Q. I appreciate the commentary, but I only have an hour  
19 and a half. Let me ask a more pointed question. My  
20 mistake for not narrowing the question.

21 A. Uh-huh.

22 Q. Was PA 436 enacted in part to overcome what were  
23 perceived to be the deficiencies or the cause for  
24 the voter referendum with regard to PA 4?

25 A. Plus additional improvements over what was public



1 act 4 or public act 72.

2 Q. Did you have any involvement in drafting PA 4?

3 A. Yes.

4 Q. Was the hope that PA 436 would avoid a referendum by

5 the voters striking it down as well?

6 A. No.

7 Q. Is one of differences between 4 and PA 436 the

8 treatment of vested pension benefits?

9 A. Not that I recall.

10 Q. Is it your understanding that PA 436 prohibits any

11 changes to vested pension benefits?

12 A. Could you -- state that again because I'm not sure

13 PA 436 really references pension benefits in terms

14 of what it covers.

15 Q. Okay. Is it your understanding that PA 436

16 authorizes the governor, you, to authorize the

17 emergency manager to file for bankruptcy protection

18 under chapter nine of the bankruptcy code?

19 A. Yes.

20 Q. Is it your understanding that PA 436 among other

21 things authorizes the Governor to place

22 contingencies on the municipal proceeding under

23 chapter nine?

24 A. Yes.

25 Q. With is it your understanding as we sit here today

1 that one of the challenges to Detroit's chapter nine

2 bankruptcy filing is that it was filed without

3 imposing as a condition a prohibition against

4 modifying the existing pension benefits?

5 A. Yes. I understand that's one of the elements of

6 objections.

7 Q. Is it your understanding that article nine, section

8 24 of the Michigan constitution prohibits tampering

9 with the vested pension benefits?

10 A. That's not my understanding of what the constitution

11 says. It does not literally say that.

12 Q. What's your understanding of what the constitution

13        says with regard to vested pension benefits?

14 A.    It talks about accrued financial benefits from the

15        state or political subdivision being treated as

16        contractual obligations, and in that context they

17        shouldn't be impaired or diminished, which is

18        different than what you stated.

19 Q.    Did you include -- using your definition did you

20        include that limitation in -- let me ask this

21        differently.

22                Using your statement, why didn't you

23        include that as a contingency or limitation on your

24        authorization to Kevyn Orr with regard to the

25        chapter nine filing for Detroit?

1 A. In terms of -- I didn't believe it was appropriate  
2 to put contingencies in it because, as I stated in  
3 my letter authorizing it, I believe that the process  
4 is required to be a legal process, which would  
5 address any legal questions through the bankruptcy  
6 process, either through the plan or the judge's  
7 review of the plan.

8 Q. So is it your understanding that any limitation on  
9 the ability to impair or change vested pension  
10 benefits under state law would also apply to the  
11 chapter nine process?

12 A. That's starting to get into legal opinions and I

13 thought it was best to leave to the judicial branch,

14 particularly a bankruptcy judge.

15 Q. I'm actually asking you what your understanding is.

16 A. My understanding is that would be resolved through

17 the bankruptcy process with the bankruptcy judge.

18 Q. Did you take an oath of office when you became

19 Governor?

20 A. Yes.

21 Q. Wasn't part of that oath to uphold the law?

22 A. It was to uphold the constitutions of Michigan and

23 the United States.

24 Q. Isn't this a provision of the constitution of

25 Michigan?

1 A. And it also involves the constitution of the United

2 States when you're talking chapter nine bankruptcy,

3 and I thought it best to leave to a judge the

4 judicial branch to make a determination of a legal

5 question.

6 Q. When you signed the authorization letter were you

7 concerned about how the pension issue would

8 ultimately get resolved through the chapter nine

9 process?

10 A. It the state of Michigan so yes.

11 Q. Did you have involvement in selection of Kevyn Orr

12 as emergency manager or emergency financial manager

13 for Detroit?

14 A. Yes.

15 Q. When did the emergency manager or the emergency

16 financial manager process that resulted in Kevyn

17 Orr's selection begin?

18 A. You can argue that began sometime back in 2011. It

19 was a continuation of a process that goes back to a

20 preliminary view that started in 2011, that went to

21 a review team in 2012, that resulted in a consent

22 agreement in early 2012. It continued throughout

23 that year.

24 When it was clear the consent agreement

25 wasn't working there was a subsequent review started



1 in December of late 2012. The review team came up  
2 with a determination that there's a financial  
3 emergency with a sufficient plan. I agreed with  
4 that conclusion. There was then a hearing and a  
5 review process of that. That was appropriately  
6 done.

7 I reaffirmed my review after receiving a  
8 report that concluded the same measure, that there  
9 was a financial emergency without a sufficient plan.

10 And given that circumstance, then we had a need for  
11 an emergency manager.

12 Q. So the last step in that process was that the point

13 at which you were interviewing candidates that

14 resulted in the selection of Kevyn Orr?

15 A. We started some the interview process prior to that

16 to be prepared as a contingency in case that was the

17 outcome of the review and the hearing process.

18 Q. Were you involved personally in that selection

19 process?

20 A. Yes.

21 Q. Who else was involved with you?

22 A. Rich Baird and several other people from the staff,

23 the mayor of Detroit was involved in the process.

24 Q. Mayor Bing was involved?

25 A. Yes.

1 Q. Was Mr. Dillon involved?

2 A. Yes.

3 Q. Was your chief of staff involved?

4 A. Yes.

5 Q. Did you rely on any outside consultants, bankruptcy

6 attorneys, financial advisors in making this

7 decision also?

8 A. I didn't personally during that process.

9 Q. Did you establish a list of criteria or

10 qualifications that you were looking for that you

11 think favorably upon in making the selection as to

12 who should be the emergency manager for Detroit?

13 A. There was criteria we discussed to go through this

14 process.

15 Q. Did that criteria include familiarity with

16 bankruptcy?

17 A. It wasn't necessarily required. It could be viewed

18 as a positive and not in the text of bankruptcy but

19 bankruptcy and restructuring experience.

20 Q. Did you view as a positive, ties to Detroit?

21 A. Yes.

22 Q. Were you looking at residency?

23 A. Not necessarily residency but familiarity with

24 Detroit.

25 Q. Did you take into account political affiliations?

1 A. No.

2 Q. Race?

3 A. Again, that would be a factor that could be of some

4 consideration.

5 Q. Did you take any account any history of political

6 party ties, political involvement or political

7 appointments?

8 A. What I would say, those would be viewed as

9 negatives.

10 Q. Did you take into account any municipal

11 redevelopment background?

12 A. In terms of restructuring or having municipal

13 experience, that would be a positive.

14 Q. Would that also include municipal budgeting or

15 financial planning?

16 A. It could.

17 Q. Did you take into account any land use or zoning

18 experience?

19 A. We didn't get to that degree of specificity, as I

20 recall.

21 Q. Were there in-person interviews in connection with

22 the selection process that resulted in the selection

23 of Kevyn Orr?

24 A. Yes.

25 Q. Who ran that process for you?

1 A. Rich Baird.

2 Q. And were you personally involved in the in-person

3 interviews?

4 A. Some.

5 Q. Did you personally interview Kevyn Orr?

6 A. Yes.

7 Q. Where did that interview take place?

8 A. I met with him more than once. I believe -- I don't

9 recall specifically which location.

10 Q. Was there a list or a slate of candidates that you

11 personally interviewed for the emergency manager

12 position?

13 A. I interviewed more than one candidate in person.

14 Q. How many candidates did you interview in person?

15 A. I recall two for sure.

16 Q. Were there more than two?

17 A. Not that I recall.

18 Q. Was Kevyn Orr a candidate before Jones Day was

19 interviewed as counsel for Detroit?

20 A. I don't believe so.

21 Q. Was he asked to be -- to consider the emergency

22 manager position during the Jones Day interview?

23 A. I wasn't part of the Jones Day interview process.

24 Q. No. My question, was it your understanding that he

25 was asked to consider the emergency manager position



1 during the Jones Day interview?

2 A. Again, I couldn't speak to a process that I wasn't a

3 participant in.

4 Q. Do you know if he was offered by Jones Day as a

5 candidate?

6 A. He was not offered by Jones Day as a candidate. We

7 asked permission if we could talk to Kevyn Orr.

8 Q. Why in your mind was he better than the other

9 candidates you were considering?

10 A. That was an extensive process. What I would say was

11 a number of candidates sort of withdrew their

12 interest in participation also during this process.

13 But I think Kevyn Orr had very strong criteria and  
14 very strong background in terms of he had ties to  
15 Michigan and Detroit both in terms of family and  
16 school, he had extensive experience in restructuring  
17 and bankruptcy, and he had very fine communication  
18 skills.

19 Q. Isn't it true that Kevyn Orr also expressed a  
20 hesitancy about accepting a position as emergency  
21 manager?

22 A. That would be speculative.

23 Q. Did he ever express to you a concern that he was  
24 perhaps uncertain about accepting the position of  
25 emergency manager if it was offered to him?

1 A. I would say -- I wouldn't -- I can't speak for  
 2 Kevyn. I think this is one of the most challenging  
 3 positions to be emergency manager in the United  
 4 States and I think that most people would have some  
 5 degree of concern about taking this position.

6 Q. While he was grappling with that decision, did you  
 7 personally reach out to him and have any  
 8 conversations with him as to why you wanted him to  
 9 take the position?

10 A. I had several discussions with Kevyn about the  
 11 challenges of this position, and to be open I made  
 12 quite clear to him that I viewed this as one of the

13 most challenging positions in our country.

14 Q. Did you indicate to him that you thought it was

15 important that he accept because of his bankruptcy

16 experience?

17 A. In terms of emphasizing his bankruptcy experience as

18 a reason to do this, no. I viewed it as his overall

19 experience in terms of being a person dealing with

20 turnarounds, restructuring and bankruptcy was very

21 relevant to this situation.

22 His experience with Chrysler I thought was

23 very helpful in terms of dealerships, of

24 understanding how to turn around a situation and see

25 it be successful.

1 Q. When did you make the final decision on Kevyn Orr?

2 A. I didn't make the final decision. I recommended

3 someone. The decision was made by the emergency

4 loan board.

5 Q. Did anybody else recommend Kevyn Orr to the

6 emergency loan board?

7 A. Well, I think some of the other people as part of

8 the interview process probably did but I think I was

9 the one really making the recommendation.

10 Q. Were you involved in the decision to retain Jones

11 Day as restructuring attorneys to the city?

12 A. That was a decision by the city of Detroit.

13 Q. Try again. Were you involved in the decision to

14 retain Jones Day as restructuring attorneys for the

15 city?

16 A. No.

17 Q. Was Mr. Baird, Mr. Dillon or any other state

18 official involved in the interview process or the

19 decision-making process with regard to the retention

20 of Jones Day by the city of Detroit?

21 A. I don't know.

22 Q. From June 2012 through the present, does Jones Day

23 provide any services or is it retained or an

24 approved attorney for the state?

25 A. I don't know. My understanding is Jones Day's

1 relationship is with the city of Detroit.

2 Q. Did you ever consider disqualifying either Jones Day

3 or Kevyn Orr because Kevyn Orr was a partner at

4 Jones Day?

5 A. They were separate processes. That the city of

6 Detroit was making a determination to retain Jones

7 Day and they were making that through their own

8 decision-making processes.

9 We were looking for candidates for

10 emergency manager, and we specifically asked

11 permission if we could contact Kevyn Orr and have

12 that discussion. So I viewed them as separate

13 discussions.

14 Q. Did you ever consider that the close relationship

15 between Kevyn Orr and Jones days created a conflict

16 or appearance of conflict?

17 A. Kevyn Orr, part of the requirement was is he

18 resigned as a partner and severed his ties with the

19 firm as part of becoming emergency manager to avoid

20 any conflict of interest.

21 Q. Well, were you concerned that he might be

22 deferential to his partners or recent former

23 partners at Jones Day?

24 A. No. Because in fact the city of Detroit made the

25 determination to hire Jones Day and they went



1 through with that process, and that was a separate  
2 independent process that I believe actually occurred  
3 prior to Kevyn Orr joining the city of Detroit as  
4 emergency manager.

5 Q. Did you consider whether it would be difficult for  
6 Mr. Orr to favor the interest of the city over the  
7 interest of Jones Day?

8 A. I don't understand your question because I don't  
9 understand why Jones Day would be in conflict with  
10 the city of Detroit. They're representing the city  
11 of Detroit.

12 Q. And aren't they being compensated about the city of

13 Detroit?

14 A. They are being compensated by the city of Detroit.

15 Q. Isn't there less of an appearance of conflict if it

16 had been a different law firm that had been retained

17 by the city of Detroit in Kevyn Orr's prior firm?

18 A. That's why it was important that he resigned and

19 severed all ties.

20 Q. During the discussions that you had with Kevyn Orr

21 prior to the time that he was appointed as emergency

22 manager or after he was appointed as emergency

23 manager but before July 18th, did you ever discuss

24 with Kevyn Orr outsourcing for the city of Detroit?

25 A. Could you explain what you mean by outsourcing.

1 Q. As part of the business plan for the city of Detroit  
 2 the city of Detroit is looking at -- potentially  
 3 looking at outsourcing some of the services that are  
 4 currently performed by city employees; is that  
 5 correct?

6 A. They're looking at the most efficient ways to  
 7 deliver services to the citizens of Detroit.

8 Q. Is that yes?

9 A. That would include that. In terms of looking at  
 10 other alternatives, some of those were outlined in  
 11 fact during the consent agreement in terms of  
 12 looking at opportunities such as having the Detroit

13 economic growth corporation handle the planning and

14 zoning activities of the city of Detroit, and that

15 was done in the context of the mayor and city

16 council approving that consent agreement.

17 Q. I'm going to try again.

18 Did you have any conversations with Kevyn

19 Orr prior to the time that he was appoint -- prior

20 to the time that he was -- during the interview

21 process, prior to the time that he was appointed as

22 emergency manager or at any time during the period

23 of time that he was appointed as emergency manager

24 on July 18th with regard to outsourcing?

25 A. I don't recall with respect to the interview

1 process, and there has been discussions about  
2 looking at providers of services in both internal  
3 and external services for the city of Detroit since  
4 that date.

5 Q. For that same period of time during the interview  
6 process and up to and including July 18th or 19th  
7 did you have any conversation with Kevyn Orr with  
8 regard to selling or monetizing assets such as the  
9 art, Belle Isle and water and sewer and other assets  
10 of Detroit?

11 A. Those discussions would have been subject to  
12 attorney-client privilege.

13 Q. Is it your understanding that the sale of assets are

14 one of the things that are under consideration in

15 connection with the restructuring plan that Kevyn

16 Orr proposed during June of 2013?

17 A. I don't recall that portion of the proposal.

18 Q. What's your view on monetizing these assets as part

19 of a restructuring plan including the art, Belle

20 Isle and water and sewer and some of the other

21 assets of Detroit?

22 A. Again, that's a hypothetical discussion because it

23 would really come down to what's presented in the

24 plan of adjustment within the context of the

25 bankruptcy court, and it hasn't been done at this

1 point.

2 Q. Well, I'm asking your view of whether or not those

3 items should be on the table in connection with the

4 structuring of that plan?

5 A. I view those as primarily Kevyn Orr's decisions

6 because he's the emergency manager for the city of

7 Detroit.

8 Q. During the interview process, prior to Kevyn Orr's

9 selection, but during the period of time you were

10 talking to him, did you ever express a view that

11 vested pension benefits should not be modified by

12 the emergency manager for the city of Detroit?

13 A. I don't recall.

14 Q. Did you have discussions prior to the time that

15 Kevyn Orr was selected with regard to your views

16 about whether or not vested pension benefits should

17 be modified?

18 A. I think that's just what you -- what's different

19 than the prior question?

20 Q. Are you saying you don't recall?

21 A. I don't recall.

22 Q. After the time that Kevyn Orr was engaged but before

23 July 18th, did you have any conversations with Kevyn

24 Orr with regard to your views on whether vested

25 pension benefits should be modified or not modified



1 as part of restructuring for Detroit?

2 A. Those would have been subject to attorney-client

3 privilege.

4 Q. As we sit here today, what is your view of whether

5 vested pension benefits should be modified or not

6 modified as a result of a restructuring or plan of

7 adjustment for Detroit?

8 A. I view that that's part of the bankruptcy process

9 that those are not my decisions to make. There's a

10 plan of adjustment that will be presented by the

11 city, assuming chapter nine goes forward, and that

12 would be adjudicated by Judge Rhodes.

13 Q. So is it your testimony today that you do not have a

14 view?

15 A. I would -- I'm not a decision maker in that process

16 with respect to deciding that the plan would be

17 adopted or not, and there has not been a plan even

18 presented at this point in time, so anything else

19 would be speculative.

20 Q. I'm asking you your view as to whether or not as

21 part of that process vested pension benefits should

22 be modified or should not be modified?

23 A. Again, I view those as primarily legal questions.

24 Q. Did you review the June 14 proposal made by Kevyn

25 Orr before the June 14 meeting with the creditors of

1       Detroit?

2   A.    I'd seen drafts.

3   Q.    Did you approve it?

4   A.    It wasn't mine to approve or not approve. That was

5       a decision of Kevyn Orr and the city of Detroit.

6   Q.    Did you express a view about it before it was

7       presented?

8   A.    I don't recall. Not any significant discussions in

9       my view.

10  Q.    Did you tell them not to present any aspect of it?

11  A.    I don't recall.

12  Q.    Did you participate at all in the development of the

13      proposal?

14 A.   Those discussions would have been subject to

15      attorney-client privilege in terms of any meetings.

16 Q.   I'm not asking what was said. I'm asking if you

17      participated in the development of the proposal?

18 A.   Again I saw early drafts. I don't -- I wouldn't

19      describe that as developing the proposal.

20 Q.   Is it your understanding that the proposal complies

21      with the Michigan constitution?

22 A.   The proposal was an effort to go talk to creditors.

23      It wasn't a plan of adjustment. It was simply a

24      document to say here's a beginning point to have

25      mutual negotiations over issues. That would have to

1 be consensual to arrive at a conclusion.

2 Q. At any time during the interview process for Kevyn

3 Orr did you discuss with Kevyn Orr the potential for

4 federal assistance in order to assist Detroit with

5 its restructuring efforts?

6 A. I don't recall.

7 Q. Do you believe it would be appropriate to seek

8 federal assistance to assist Detroit with its

9 restructuring efforts?

10 A. I'm publicly on the record saying that I didn't

11 believe it would be appropriate to go ask the

12 federal government for a bail out with respect to

13 the debts of the city of Detroit. That I thought it

14 would be appropriate to say are there normal

15 assistance procedures available to help improve

16 services to citizens.

17 Q. Have you assisted Kevyn Orr in going after federal

18 assistance in the places where you've identified it

19 as appropriate?

20 A. I have been part of that process, not only with

21 Kevyn Orr but with Mayor Bing.

22 Q. Specifically how have you been part of that process?

23 A. Well, in fact, we just had a press conference where

24 several cabinet members came to Detroit along with

25 Gene Sperling from the Whitehouse and they announced

1 a package of federal programs. I was present

2 through that process.

3 Q. Was Mayor Bing present through that process as well?

4 A. Yes.

5 Q. And Kevyn Orr?

6 A. Yes.

7 Q. Do you believe there should be state assistance with

8 regard to the restructuring plan for Detroit?

9 A. We have been providing assistance with improved

10 services to the citizens.

11 Q. Give some examples of some of that assistance.

12 A. Sure. We've been active on the blight front in

13 terms of dealing with removing structures. We've  
14 put significant resources towards that. Another one  
15 is we did the new Detroit detention center. The  
16 Department of Corrections did that in partnership  
17 with the Detroit police department.

18 Q. Have you looked at any avenues to use state  
19 assistance to deal with the pension under funding  
20 issue?

21 A. Not at this point in time.

22 Q. During the interview process with Kevyn Orr did you  
23 discuss the potential for a chapter nine filing?

24 A. In terms of those discussions, what I would say is  
25 as a last resort we had to be aware that chapter



1      nine might be the only available option.

2    Q.    Did you discuss with Kevyn Orr whether vested

3      pension benefits could be reduced or modified in

4      chapter nine?

5    A.    I don't recall.

6    Q.    Do you recall any discussions with Kevyn Orr during

7      the interview process with regard to vested pension

8      benefits?

9    A.    I don't recall.

10   Q.    During the period of time that you were interviewing

11      Kevyn Orr for emergency manager, did you have any

12      discussions with Mayor Bing with regard to your

13 proposed selection of Kevyn Orr?

14 A. Yes.

15 Q. What was discussed?

16 A. In terms of working relationships and did Mayor Bing

17 think Kevyn Orr could be a good candidate to be

18 emergency manager.

19 Q. What did Mayor Bing say to you?

20 A. I didn't speak to him specifically after that, but I

21 helped talk to him during that process. My

22 understanding was he was supportive of Kevyn Orr.

23 Q. Were you personally involved in those discussions or

24 was it somebody on your behalf?

25 A. In terms of I had spoken to Mayor Bing about Kevyn

1 Orr being part of process and some of the feedback

2 that he had early in the process, but by the end of

3 the process there were other people also

4 participating in a that such as Rich Baird.

5 Q. Did you meet with Mayor Bing personally?

6 A. I spoke to him on the phone as I recall.

7 Q. Prior to the time that you selected Kevyn Orr did

8 you meet with any of the unions for the city of

9 Detroit to solicit their input with regard to the

10 selection of the emergency manager?

11 A. No.

12 Q. Did you speak with any retiree groups?

13 A. No.

14 Q. Did you speak with to any of the city's so-called

15 Wall Street creditors, bond holders, larger

16 creditors?

17 A. No.

18 Q. Did you speak to the pension funds?

19 A. No.

20 MS. LEVINE: Thank you, Governor.

21 THE WITNESS: Thank you.

22 VIDEO TECHNICIAN: Take a break, switch?

23 Off the record 9:31 a.m.

24 (A brief recess was taken.)

25 VIDEO TECHNICIAN: Go back on the record at

1 9:40 a.m.

2 BY MR. DeCHIARA:

3 Q. Good morning, Governor. My name is Peter DeChiara.

4 I'm an attorney with the law firm of Cohen, Weiss

5 and Simon LLP. We represent the united auto workers

6 international union in this proceeding.

7 I'd like to show you a document that I've

8 asked the court reporter to mark as Exhibit No. 1.

9 It's identified for the record it's a July 16th,

10 2013 letter that was from emergency manager Kevyn

11 Orr to you and to treasurer Andrew Dillon.

12 You're familiar with this letter, are you

13 not?

14 A. Yes.

15 Q. I'd like you to turn to the second page of the

16 letter and in particular the bottom of the letter,

17 the third line from the bottom in the middle of the

18 line there's a sentence that I'll read out loud. It

19 says quote the city has over 18 billion in accrued

20 obligations including: A, 3.5 billion in under

21 funding pension liabilities based on the most recent

22 actuarial analysis semi colon. I'll finish the

23 quote there.

24 The sentence goes on, and you can feel free

25 to read the rest of the sentence but I just wanted

1 to ask you about the portion that I quoted.

2 When you received this July 16th letter

3 from Mr. Orr did you read it?

4 A. Yes.

5 Q. Okay. And did you read this line that I just

6 quoted?

7 A. Yes.

8 Q. And did you take it as true that the city had over

9 18 billion dollars in accrued obligations including

10 3.5 billion in under funding pension liabilities?

11 A. The answer is yes, but it was also in the context of

12 the most recent evaluation. To say that there was

13 an open question did there need to be more

14 evaluations or additional work done.

15 Q. I'm sorry. Your answer is yes, you did take that

16 statement as true?

17 A. Yes. Uh-huh.

18 Q. Okay. Did you undertake any independent

19 investigation or cause any independent investigation

20 to be undertaken to determine whether the statement

21 that I quoted was true?

22 A. I also looked back to prior review team reports

23 which in many cases had very similar information.

24 Q. Did -- were you aware that at the time this

25 July 16th letter was written, the pension funds



1       themselves were disputing the statement that the  
 2       amount of under funding of the pension liabilities  
 3       was 3.5 billion. Were aware of that fact?

4 A.   I was aware that people were disputing it in terms  
 5       of both being higher or lower.

6 Q.   Were you aware that the pension funds themselves  
 7       were saying the number was lower?

8 A.   I don't recall that.

9 Q.   Did Mr. Orr ever tell you that?

10 A.   I don't recall.

11 Q.   He might have told you that?

12 A.   Again, I don't recall.

13 Q. Okay. Do you think it was important in your

14 determination as to whether to authorize Detroit to

15 file for bankruptcy to know the correct amount of

16 the city's under funded pension liabilities? Did

17 you think that was important?

18 A. I think that was one element of a much larger

19 question. As you pointed out in the sentence, the

20 sentence talks about \$18 billion of liabilities.

21 Q. But my question Governor is did you think at the

22 time you made your decision about whether or not to

23 authorize the Detroit bankruptcy filing that it was

24 important to know the amount of the city's under

25 funding pension liabilities?

1 A. I would say it was important to know that there was  
2 an under funded amount of an order of magnitude in  
3 relationship to the \$18 billion. Again, people were  
4 saying that number could be lower, it could be  
5 higher. So I didn't assume that was necessarily the  
6 exact number. But in the context of \$18 billion of  
7 liabilities there was clearly a problem that I  
8 concurred with the recommendation.

9 Q. Well if the amount of under funded pension  
10 liabilities had been lower, the overall accrued  
11 obligations would have been lower as well, correct?

12 A. One of the things I looked at --

13 Q. Am I correct, Your Honor? I mean Governor?

14 A. The overall number would be lower. In terms of

15 context though one of the things I looked at was

16 prior reports that showed the current -- the city of

17 Detroit was paying 38 cents on the dollar towards

18 historic or legacy liabilities. That there were

19 projections to show that by 2017 that number would

20 raise to 60 cents on the dollar.

21 Q. Do you know whether -- at the time that you received

22 the July 16th letter from Mr. Orr do you know

23 whether Mr. Orr or his staff at that time had

24 undertaken an analysis of the assets of the city of

25 Detroit to see what assets could be monetized to

1 address the city's financial problems?

2 A. There was -- it was clear that there was a need to

3 do a survey of assets and valuation of the assets of

4 the city. Whether those were to be monetized or not

5 but there was a need to do an inventory of assets

6 and value those assets.

7 Q. My question is at the time you received the July

8 16th letter were you aware of whether Mr. Orr or his

9 staff had undertaken an analysis of the assets of

10 the city of Detroit to see which might be monetized?

11 A. My understanding was a lot of that work still needed

12 to be done.

13 Q. Okay. Did you think when you received the July  
14 16th, 2013 letter that it would be important to know  
15 whether the city had assets that could be monetized,  
16 and if so what those assets might be? Did you think  
17 that was something important to know?

18 A. Can you repeat that again?

19 Q. Sure. At the time you received the July 16th, 2013  
20 letter from Mr. Orr, did you think at that time that  
21 it would be important to know whether the city had  
22 assets that could be monetized? And when I say  
23 important I mean important in the context of your  
24 making your decision on whether to authorize the  
25 bankruptcy filing?

1 A. I didn't view the valuation of assets being nearly  
2 as relevant as understanding what the liabilities  
3 were because the issues was were the liabilities so  
4 large that there needed to be something done to  
5 address them. Understanding that, again, we had a  
6 \$18 billion give or take kind of number that needed  
7 to be addressed and that it would take sometime to  
8 understand what assets, what values they may have  
9 and what might be available.

10 Q. Have you ever been involved in a business, Governor  
11 Snyder?

12 A. Yes.

13 Q. Isn't it true to assess the financial picture of a

14 business you need to know both the assets and the

15 liabilities of the business?

16 A. This is a different situation in terms --

17 Q. Can you answer my question?

18 A. Yes.

19 Q. The answer to my question is yes?

20 A. Yes.

21 Q. Okay. At the time you received Mr. Orr's July 16th

22 2013 letter, do you know whether Mr. Orr or his

23 staff had undertaken an analysis such that they knew

24 with specificity the city's cash flow?

25 A. There had -- there was extensive work done doing



1 cash flow analysis of the city. Some of that work  
 2 was included in the proposal to creditors back in  
 3 June.

4 Q. Okay?

5 A. In addition to reports that had been provided under  
 6 his obligation as emergency manager.

7 Q. But at the time that you received the July 16th,  
 8 2013 letter do you know whether Mr. Orr or his staff  
 9 had done an analysis which allowed them to know with  
 10 specificity the extent of the city's cash flow?

11 A. I believe they had.

12 Q. Okay. Did you ever discuss that with Mr. Orr?

13 A. That would be a matter of attorney-client privilege.

14 Q. Well, whether it's a matter of attorney-client

15 privilege is a legal question, and you have counsel

16 here who can object if she believes that a question

17 infringes on the attorney-client privilege so I

18 would ask you to answer the question.

19 MS. NELSON: You can answer yes or no.

20 THE WITNESS: Yes.

21 BY MR. DeCHIARA:

22 Q. Yes, you did have discussions?

23 A. Yeah.

24 Q. And were those discussions -- were other people

25 present other than you and Mr. Orr in those

1 discussions?

2 A. Yes.

3 Q. Isn't it true you had one on one conversations with

4 Mr. Orr prior to the bankruptcy filing?

5 A. Yes.

6 Q. Okay. In any of those one on one conversations with

7 Mr. Orr did you ever have a discussion of the city's

8 cash flow.

9 A. Not that I recall.

10 Q. Do you know whether a significant portion of

11 Detroit's unfunded pension liability is allocable to

12 the city's water and sewer department?

13 A. I'm not aware of that relationship.

14 Q. Okay. Is that something that you think would be

15 relevant to a determination about whether or not the

16 city should pursue a bankruptcy?

17 A. I haven't considered that as a question.

18 Q. Okay. Let me now refer you to page six of

19 Exhibit 1. And at the bottom paragraph of the page

20 there's a reference to the June 14th creditor

21 proposal. Do you see that?

22 A. Yes.

23 Q. Okay. And you were familiar with that proposal when

24 you received this letter on July 16th?

25 A. Generally familiar. It's 128 page document.

1 Q. Okay. I'd like to mark as -- well, I've already  
 2 marked as Exhibit 2, and I'll ask you to identify  
 3 what I'll identify for the record as a July 18th,  
 4 2013 letter from you to Mr. Orr and Mr. Dillon.

5 Is Exhibit 2 your response to what's been  
 6 marked as Exhibit 1?

7 A. Yes.

8 Q. Governor, I've had the court reporter mark as  
 9 Exhibit 3 a document which bears the title city of  
 10 Detroit proposal for creditors June 14th, 2013.

11 Let me represent to you that this document  
 12 was attached to the Orr declaration that was filed

13 in the bankruptcy proceeding as the city's proposal

14 for creditors.

15 Let me -- did you see this document in any

16 prior form before it was made public on or about

17 June 14th, 2013?

18 A. Yes.

19 Q. And do you plan -- were you shown drafts of the

20 document?

21 A. I'd seen a draft or so. I can't recall whether it

22 was one or more.

23 Q. Okay. And who showed them to you?

24 A. Again, I don't recall.

25 Q. Okay. Did you comment on the draft?

1 A. I generally reviewed it and just gave general

2 feedback.

3 Q. To whom did you give feedback?

4 A. It would have been subject to attorney-client

5 privilege.

6 Q. Well again that's a legal question?

7 A. Yeah, it would have been to Kevyn Orr.

8 Q. To Kevyn Orr. Okay.

9 A. Yeah.

10 Q. How did you convey your comments to Kevyn Orr? Did

11 you speak to him?

12 A. Yes.

13 Q. Okay. By phone?

14 A. I don't recall.

15 Q. Okay. You don't recall whether it was by phone or

16 in person?

17 A. Correct.

18 Q. Okay. Do you recall who if anyone else was present

19 either on the phone or in person when you had those

20 communications?

21 A. There could have been several people including legal

22 counsel.

23 Q. Okay, but you don't know that for a fact; is that

24 correct?

25 A. I know there would have been other people including



1 legal counsel.

2 Q. So you're sure that -- well, let's talk about in

3 the -- so the conversation you say may have been on

4 the phone?

5 A. Yeah.

6 Q. Are you sure that while you were on the phone with

7 Kevyn Orr speaking about the proposal for creditors

8 that there were legal counsel on the phone?

9 A. Yeah I'm quite confident of that. Typically, again,

10 almost every time or every time I recall there were

11 a group of people, there was legal counsel present.

12 The only time I met separately with Kevyn Orr was on

13 subject matters that didn't relate to matters like

14 this.

15 Q. What did you tell Kevyn Orr when you spoke to him

16 about the June 14th 2013 proposal.

17 MS. NELSON: Objection; attorney-client

18 privilege.

19 BY MR. DeCHIARA:

20 Q. Are you refusing to answer the question, Governor?

21 A. Yeah. There was counsel present.

22 Q. All right. Just for the record, to be clear, you're

23 refusing to answer the question?

24 A. Yes.

25 Q. Okay. Let me direct your attention -- strike that.

1 Let me back up.

2 Did you put your comments in writing to

3 anyone -- your comments about the June 14th, 2013

4 proposal. Did you put your comments in writing to

5 anyone whether by letter or email or phone text or

6 in any other written format?

7 A. I don't believe so. I don't believe so.

8 Q. Let me now turn your attention to page 109 of

9 Exhibit 3. And I'm going to in particular read the

10 second line of the third bullet point from the

11 bottom. It says, quote, there must be significant

12 cuts in accrued vested pension amounts for both

13 active and currently retired persons, end quote.

14 Were you aware that the proposal said this?

15 A. I'm aware the proposal said that in the context that

16 this was to be a negotiation and a mutual agreement

17 between parties.

18 Q. My only question was --

19 A. Yeah.

20 Q. -- were you aware that this proposal said this?

21 A. Yes.

22 Q. And you were aware that at the time that you signed

23 what's been marked as Exhibit 2, the July 18th

24 letter, you were aware that the proposal contained

25 the language I just read, correct?

1 A. Yes.

2 Q. So you were aware when you signed the July 18th,

3 2013 letter that it was Kevyn Orr's view that there

4 had to be significant cuts in accrued pension

5 liabilities, correct?

6 A. I would say it was Kevyn Orr putting a proposal out

7 to parties to say he believed this was necessary to

8 achieve an outcome, that they would need too agree

9 to that.

10 Q. I'm not sure that was responsive. Let me try that

11 question again.

12 A. Okay.

13 Q. Isn't it correct that at the time that you signed

14 your July 18th letter that you were aware that it

15 was Kevyn Orr's position that there had to be

16 significant cuts in accrued pension benefits?

17 A. Yes.

18 Q. Did you speak to Kevyn Orr about -- strike that.

19 Did you agree with that position as of July

20 18th? And by the position I mean that there had to

21 be significant cuts in accrued pension liabilities?

22 A. The approval of my letter was not addressing that as

23 an issue. It was about authorizing a bankruptcy.

24 It doesn't say I agree with that or disagree with

25 that. It simply says I authorized it to go forward

1     where a plan would be presented to a judge that  
 2     could be the result of further negotiations,  
 3     mediations, all kinds of work that ultimately a  
 4     judge would decide.

5 Q.   Okay. I'm not addressing your July 18th letter?

6 A.   Yeah.

7 Q.   I'm just pegging the question?

8 A.   Okay.

9 Q.   By time frame as of July 18th?

10 A.   Okay.

11 Q.   So as of July 18th, did you share Mr. Orr's view

12     that there had to be significant cuts in pension

13 liabilities?

14 A. Based on the current situations with negotiations

15 that continued to be the position that would be on

16 the table going into bankruptcy.

17 Q. Again, I'm not sure that was responsive.

18 A. Uh-huh.

19 Q. As of July 18th, 2013, did you share Mr. Orr's view

20 that whether through negotiation or other means that

21 there as an end result had to be significant cuts in

22 accrued pension liabilities?

23 A. I wouldn't use the word had to be but likely could

24 be.

25 Q. Okay. Well Mr. Orr used the word, quote, there must



1 be, end quote?

2 A. Uh-huh.

3 Q. Did you share that view that there had to be?

4 A. Not necessarily.

5 Q. Okay.

6 A. Just as I said.

7 Q. Okay. So did you think about this issue as of -- or

8 as of the July 18th, 2013 time frame had you given

9 thought to whether or not there had to be cuts to

10 accrued pension benefits?

11 A. I gave thought to the issue because I have concern

12 for the retirees, and that was why one of the

13 important questions in my view was to have a retiree  
14 representative in the bankruptcy.

15 Q. And what was your -- since you said you gave thought  
16 to it, can you articulate what your position was as  
17 to whether or not there had to be cuts in accrued  
18 pension liabilities? And I'm focusing on your views  
19 on the matter as of July 18th, 2013.

20 A. My view going back prior to that is I had hoped that  
21 there would be negotiations to resolve this short of  
22 bankruptcy because bankruptcy was a last resort;  
23 that I hoped that people could come to the table and  
24 come up with a mutual understanding and negotiation  
25 that would be satisfactory to the parties involved.

1           That didn't happen in terms of that regard  
2       but I still had hope to say that as you go through  
3       the bankruptcy process I viewed it as likelihood  
4       that there was less flexibility under the bankruptcy  
5       process just because of the nature of federal  
6       bankruptcy law than there probably was before.

7 Q.   Was it your view that as of July 18th in the  
8       bankruptcy one way or another accrued pension  
9       liabilities would have to be reduced?

10 A.   Based on the facts going into it, it was one of  
11       those questions, as you said, there was a likelihood  
12       of that happening.

13 Q. That's not my question.

14 A. Yes. Yeah, I believe there's a likelihood there

15 could be reductions in unfunded pension liabilities.

16 Q. Okay. I'm not asking --

17 A. Yeah.

18 Q. Governor, I'm not asking you to predict the

19 likelihood of what might have happened?

20 A. Okay.

21 Q. I'm asking you whether you believed that in

22 bankruptcy there would have had to be one way or

23 another reductions in Detroit's accrued liabilities?

24 A. I would say it's not a hundred percent belief.

25 Q. But was it a less than 100 percent belief that there

1 had to be reductions?

2 A. Again if you looked at the numbers, as we discussed

3 earlier, those are significant numbers and it would

4 be hard to see how it could be a hundred percent.

5 Q. Let me -- did you discuss with anyone other than

6 your legal counsel and Mr. Orr whether there had to

7 be cuts to Detroit's accrued pension liability?

8 A. When you say other people there would be people from

9 the administration in the meetings that we had.

10 Q. Who did you discuss that issue with?

11 A. There could be any number of people that would

12 include my chief of staff, Andy Dillon, and other

13 people of the administration.

14 Q. And what did you and Andy Dillon discuss on that

15 issue?

16 MS. NELSON: I'm going to object on the

17 grounds of attorney-client privilege. These

18 discussions occurred in the meetings with Mr. Orr

19 and his counsel.

20 MR. DeCHIARA: There hasn't been testimony

21 to that effect.

22 MS. NELSON: He just said it.

23 THE WITNESS: Yeah, I said those were

24 meetings in those same meetings.

25 BY MR. DeCHIARA:

1 Q. The discussions you had with Mr. Orr were those in  
2 the presence of legal counsel?

3 A. Yes.

4 Q. I'm sorry, the discussions you had with Mr. Dillon,  
5 were those in the presence much legal counsel?

6 A. They were in the same meeting in terms of --

7 Q. Did you have any discussions with Mr. Dillon outside  
8 of the presence of legal counsel?

9 A. Mr. Dillon would on occasion bring forward ideas and  
10 thoughts.

11 Q. On whether or not the pension liabilities had to be  
12 cut?

13 A. On pensions in general. In terms of valuation and

14 pension plans.

15 Q. And did you discuss those with him?

16 A. I listened to him.

17 Q. Did you -- well what did he say? What was his

18 views?

19 A. I don't recall all the details.

20 Q. Give me the best that you can recall?

21 A. Again, it was a question of them being under funded

22 and were there other alternatives or other ways to

23 deal with this and being concerned about retirees.

24 Q. Did Mr. Dillon say that in his view the pension

25 liabilities had be to cut?



1 MS. NELSON: Outside of this meeting you

2 mean?

3 BY MR. DeCHIARA:

4 Q. Yeah, I'm talking about meetings outside of the

5 presence of legal counsel the Governor has testified

6 occurred.

7 A. He was trying to bring forward ideas and thoughts

8 about were there other alternatives.

9 Q. That's not my question. It's actually a yes or no

10 question.

11 Did Mr. Dillon express to you the view that

12 the pension liabilities had to be cut?

13 A. I don't recall in terms of all the pieces. Again,

14 in some ways yes, but also he was trying to be

15 creative in saying are there other options or

16 alternatives.

17 Q. Was he saying that the pension liabilities had to be

18 cut but that -- alternatives to doing it --

19 A. Yeah.

20 Q. -- had to be explored?

21 A. It was more exploring alternatives.

22 Q. Okay?

23 A. That's why I'm not trying to be difficult here.

24 Q. I appreciate it, and I'm not suggesting you're

25 trying to be difficult, Governor. I appreciate your

1 effort, and I know I'm posing questions that, you  
2 know, take careful response so I'm not suggesting  
3 you're being difficult.

4 But we spoke over each other, and I'm not  
5 sure the record was clear so let me just try it one  
6 more time.

7 Is it fair to characterize Mr. Dillon's  
8 comments to you on the subject to say that he said  
9 to you that he thought the pensions had to be cut  
10 but that there should be alternatives that should be  
11 explored in connections with the pensions?

12 A. Yes.

13 Q. And did you respond to him when he said that?

14 A. I thanked him for his confidence.

15 Q. Did you say anything more substantive than that?

16 A. I appreciated him coming forward with trying to

17 solve problems and that I said I would follow up,

18 and my followup was to make sure that his comments

19 were shared in the broader meetings context that we

20 discussed earlier with Kevyn Orr and other people

21 and counsel.

22 Q. Did you -- are you aware that attorney general Bill

23 Schuette has --

24 A. Schuette.

25 Q. Schuette. Thank you. I'm not from Michigan so

1 please excuse my mispronunciation. Schuette. Let

2 me write that down.

3 I'll just say the attorney general. Are

4 you aware that the attorney general has taken the

5 position that the Michigan constitution prohibits

6 the reduction of accrued pension liability?

7 A. I was aware the attorney general filed a brief on

8 pensions.

9 Q. Okay. Before he filed that brief, were you aware --

10 well do you know whether he had that position before

11 he filed the brief?

12 A. He contacted me before he filed the brief.

13 Q. How long before he filed the brief?

14 A. I don't -- it could have been a day, a few days.

15 Q. Okay. And did he before we -- did you speak to him

16 on that occasion?

17 A. Yes.

18 Q. Was it a telephone call?

19 A. Yes.

20 Q. Who else was on the phone, if anyone?

21 A. Just the two of us.

22 Q. Okay. Before that phone call, did you speak to the

23 attorney general on any prior occasion about his

24 position on whether the Michigan constitution

25 prohibited the cutting of pension benefits?

1 A. I don't recall.

2 Q. What was said in that phone call?

3 A. I don't recall the specific exchange. The basic

4 gist of the call was is he was looking to file a

5 brief on this and he wanted to make sure I was aware

6 of it, and I thanked him for that because I said

7 your exercising what you believe is appropriate as a

8 constitutional officer of the state of Michigan, I

9 appreciate you sharing that with you and you should

10 follow through with your duties just as I'm

11 responsible for following through with my duties.

12 Q. Do you believe that the opinion of the attorney

13 general of the state of Michigan on questions of

14 Michigan State law are entitled to weight?

15 A. Well that's a separate issue. This was not an

16 opinion of the attorney general. This was a brief

17 filed in a case.

18 Q. Well, if you could answer my question, Governor?

19 MS. NELSON: Well, I'm going to object

20 because an attorney general opinion has very

21 specific meaning here in Michigan under state law.

22 And that's what you're asking is an opinion and

23 that's not what this is.

24 MR. DeCHIARA: Okay. Okay. When I use

25 opinion I don't mean it in the sense of a formal



1 legal opinion.

2 THE WITNESS: Oh, that's why I take it when

3 you said that.

4 MR. DeCHIARA: I'm sorry, miscommunication.

5 THE WITNESS: Because he does do formal

6 opinions.

7 BY MR. DeCHIARA:

8 Q. Okay. Let me use the word view.

9 A. Uh-huh.

10 Q. Do you believe that the view of the attorney general

11 on questions of interpretation of Michigan State law

12 are -- should be accorded weight?

13 A. In terms of -- I respect the attorney general. Many

14 parties submit briefs, and I assume the court will

15 make the decision as to how to weight the brief of

16 the attorney general.

17 Q. I'm not sure you answered my question.

18 A. Yeah.

19 Q. Do you think the view of the attorney general of the

20 state of Michigan on questions of Michigan State law

21 should be accorded weight?

22 A. Again, that's a very subjective thing. I don't view

23 them as being the same as Michigan law.

24 Q. No, I'm not suggesting they are. I'm asking in your

25 view should they be accorded weight?

1 A. Again, I would just hold out I have respect for the  
2 attorney general and the work product. They're  
3 representing me here today.

4 Q. Let me ask the court reporter to mark as Exhibit 4  
5 an article that appeared in the Detroit Free Press  
6 on July 29th 2013.

7 Exhibit 4 marked for identification.

8 BY MR. DeCHIARA:

9 Q. And in the middle of the article that's Exhibit 4,  
10 there's a -- the sixth paragraph there's a quote at  
11 the end of the paragraph. And the article purports  
12 to quote the attorney general as saying, quote, the

13 Michigan constitution is crystal clear on this.

14 Article nine section 24 says pensions may not be

15 impaired, and I will fight to defend the

16 constitution and the citizens it protects, end

17 quote.

18 Governor, are you prepared to fight to

19 defend the constitution and the citizens it

20 protects?

21 A. I do that every day.

22 Q. Are you prepared to revoke your authorization for

23 the bankruptcy filing of the city of Detroit?

24 A. I don't know why I would do that.

25 Q. Let me refer you back to Exhibit 1 and in -- it's

1 the July 16th letter, and in particular let me refer

2 your attention to the top of page 11.

3 On the second line starting in the middle

4 of the line and going on to the next line it says,

5 and I'm reading the middle of a sentence, but feel

6 free, Governor, to read the entire sentence or

7 document, but let me just quote what I want to draw

8 your attention to.

9 A. Which paragraph?

10 Q. It's page 11, the very top paragraph.

11 A. Okay.

12 Q. It's the -- I'm going to start reading from the

13 middle of the second line on the top of page 11. It

14 says, quote, the city has negotiated in good faith

15 with the creditors willing to engage in a

16 discussion.

17 And then I'll stop the quote there, but

18 again feel free to read the rest of the sentence.

19 My question is did you accept as true

20 Mr. Orr's representation to you that the city had

21 negotiated in good faith with the creditors willing

22 to engage in discussions?

23 A. Yes. Excuse the delay. I just wanted to make sure

24 -- I was going to point out that in the letter he

25 actually gave examples of where they tried to do

1      that on page eight.

2    Q.    Okay. Okay. Apart from the letter -- well first of

3      all, did you think when you received and read this

4      letter on July 16th that it was important to your

5      decision making whether or not the city had in fact

6      engaged in good faith negotiations?

7    A.    Yes.

8    Q.    Okay. And did you undertake any independent

9      investigation or cause to be undertaken any

10     independent investigation to determine whether in

11     fact Mr. Orr's representation to you that there had

12     been good faith negotiations, whether that was a

13 true representation?

14 A. Yes.

15 Q. What was your -- what independent investigation did

16 you cause to be undertaken?

17 A. What I would say is I looked at this in addition to

18 the facts of what had been publicly filed which

19 would include the lawsuits that -- I apologize, I

20 can't remember who's representing which lawsuits,

21 but it showed that rather than people continuing

22 negotiations that some of the parties that were in

23 negotiations with the city elected to go file

24 lawsuits, which showed there was a breakdown in

25 negotiations, that people were going to court rather



1      than continuing dialogue.

2 Q.   So just so I understand your answer. Your

3      acceptance of the truth of the assertion that there

4      had been good faith negotiations were based on what

5      you read in the July 16th letter?

6 A.   Uh-huh.

7 Q.   And also the fact that certain lawsuits had been

8      filed?

9 A.   Yes.

10 Q.   Okay. Was there anything else that you relied on to

11      conclude that there had been good you faith

12      negotiations?

13 A. No.

14 Q. Okay. Were you expecting to receive the July 16th,

15 2013 letter before you received it?

16 A. It was a work in process in terms of I didn't know

17 it was coming for sure, but I knew he was putting

18 together a letter.

19 Q. Who told you that -- I assume when you say he you

20 mean Mr. Orr?

21 A. Yes.

22 Q. Who told you Mr. Orr was putting together a letter?

23 A. That would have been Kevyn Orr himself.

24 Q. Okay. And how did he tell you that? Was it in

25 writing or spoken words?

1 A. It would have been in a meeting where we had

2 attorneys present.

3 Q. Okay. And at this meeting he indicated to you that

4 he was going to be sending you a letter seeking

5 authorization to file for bankruptcy?

6 A. He said he was going to begin work on that.

7 Q. Okay. Apart from that communication at that meeting

8 did you receive any other heads up, if I can use

9 that term, that the letter was on its way?

10 A. Well again there were people in that meeting that

11 were also aware of that, so there were discussions

12 if a letter was to come how would we respond.

13 Q. Okay. But apart from that meeting where you

14 testified Mr. Orr told you that he was going to send

15 the letter -- first of all, when was that meeting,

16 do you know?

17 A. It was in the prior week.

18 Q. So it was a week before July 16?

19 A. Yeah.

20 Q. Okay. Between that meeting -- do you remember the

21 day?

22 A. No.

23 Q. Do you remember the date?

24 A. No.

25 Q. Okay. Between that meeting and when you received

1 the letter, did anyone else communicate to you that

2 the letter was coming?

3 A. Again, context I would put it in is there were

4 people looking -- people on my staff that were

5 looking to see if a letter was to come, how would we

6 communicate that in terms of if I was to respond and

7 what time would I respond to the public.

8 So it was more looking at the timeline of a

9 communications plan.

10 Q. I'm sorry, I'm not sure I understood.

11 A. So --

12 Q. Let me just ask a more specific question.

13           After the meeting that you've testified

14       about and before you got the letter did anyone tell

15       you that the letter was coming?

16 A.   They didn't give me any information different than I

17       had received from Kevyn Orr.

18 Q.   And the information from Kevyn Orr is what you

19       received at the meetings?

20 A.   Yeah, an updated -- well, again we continued to talk

21       after that, so that would have been wouldn't have

22       been the only discussion.

23 Q.   Okay. You and Kevyn Orr continued to talk after the

24       meeting?

25 A.   Yes.

1 Q. Was it a one on one conversation?

2 A. No.

3 Q. Was it the context of subsequent meetings?

4 A. Or calls.

5 Q. Were there attorneys on those calls?

6 A. Yes.

7 Q. On each of the calls?

8 A. Yes.

9 Q. Okay. When you received the July 16th letter, which

10 asked for you to approve a bankruptcy filing, did

11 you immediately upon reading the letter know how you

12 were going to respond?

13 A. No.

14 Q. And did you give consideration to anything before

15 you made the decision that is set forth in your July

16 18th letter?

17 A. I contemplated. Actually I said this was a major

18 decision. A very significant decision about Detroit

19 and implications for our state and for a number of

20 parties.

21 Q. And what were your -- what did you -- what were your

22 contemplations on?

23 A. It was again reviewing the letter that had been

24 provided, it included going back to the review team

25 reports, it had been looking at the totality,



1     because this is a situation again, let me know if  
2     you want to stop, but this is a process that I've  
3     been addressing since becoming Governor that goes  
4     back to 2011 going through preliminary reviews,  
5     reviews, consent agreements. This has been a highly  
6     structured process for close to three years.

7   Q.   Between the time you received the July 16th letter  
8     and when you signed your July 18th letter, did you  
9     speak to anyone about your decision making, thinking  
10    outside of the context or outside of the presence of  
11    legal counsel?

12   A.   No.

13 Q. Did you undertake or cause anyone to undertake any

14 investigation of any facts or legal conclusions that

15 were in the July 16th letter before you made your

16 decision to sign the July 18th letter?

17 A. Well, I mentioned the lawsuit issue but besides that

18 it was more looking at the consistency of what was

19 in this letter with prior reports from Kevyn Orr and

20 prior reports from the review team. Review teams I

21 should say.

22 Q. Let me refer you to page four of the July 18th

23 letter. At the top there's a paragraph that bears

24 the heading contingencies?

25 A. Uh-huh.

1 Q. And I'm going to read the first sentence. It says  
2 quote 2002 PA 436 provides that my approval of the  
3 recommendation to commence a chapter nine proceeding  
4 may place contingencies on such a filing. That's  
5 the end of the sentence. Then there's a legal  
6 citation and then the next sentence says I am  
7 choosing not to impose any such contingencies today,  
8 period, end quote.

9 Did you consider at any point after you  
10 received the July 16th letter placing any  
11 contingencies on the city's bankruptcy filing?

12 A. My legal counsel made me aware that contingencies

13       were permitted under the law, but I chose not to

14       place any.

15 Q.   Okay.

16 A.   Yeah.

17 Q.   It's clear from your letter that you chose not to

18       place any. My question is before you made that

19       decision not to place any was there any period where

20       you considered placing any -- any contingencies on

21       the filing?

22 A.   I'm not trying to be difficult but the matter was

23       brought to my attention, and I dismissed it without

24       major discussion with my legal counsel because the

25       way I viewed it was placing contingencies could only

1      cause most likely cause more delay or confusion in  
2      the bankruptcy process; that I have confidence in  
3      the bankruptcy process itself in terms of being a  
4      legal process and appropriately legal process; and  
5      that's why in fact I wanted that sentence added.

6 Q.   What sentence are you referring to?

7 A.   The sentence about federal law already contains the  
8      most important contingency, a requirement that the  
9      plan be legally executable.

10 Q.   I'm going to ask you about that in a minute but I  
11      just want to focus first on your decision not to  
12      place any contingencies?

13 A. Well that's why I didn't. I simply said I thought

14 that was the one contingency that was appropriate

15 that it be in line with being legal.

16 Q. Okay. You were aware as of July 18th that some

17 people, some entities argued that the Michigan

18 constitution prohibited the reduction of accrued

19 pension benefits? Were you aware of that as of July

20 18th?

21 A. Yes.

22 Q. Did you consider making the Detroit city bankruptcy

23 filing contingent on the city not seeking to cut

24 accrued pension liabilities? Did you consider that?

25 A. I considered it by adding this sentence which

1 basically says it's a matter -- it's a legal  
2 question to say Michigan constitution versus federal  
3 law versus other Michigan statutes, and I was going  
4 to leave that -- that's a legal question that I  
5 thought best left to the courts.

6 Q. So is it your testimony that you did consider  
7 putting that contingency on but he you decided not  
8 to because of the reason you just said?

9 A. Well, again, I viewed this as an overriding  
10 statement that I thought whatever came out of this  
11 process through the bankruptcy needed to be a legal  
12 answer, because I do follow the law.

13 Q. Okay. I just want to be clear --

14 A. Yeah.

15 Q. -- I'm understanding your testimony.

16 You did considerate some point before you

17 signed -- is it true that at some point before you

18 signed the July 18th letter that you considered

19 making the bankruptcy filing contingent on the city

20 not seeking to cut accrued pension benefits?

21 A. I would say -- I wouldn't describe it that way. I

22 would describe it not just on pensions or anything

23 else. Just the totality of the situation to say

24 that there are many legal questions that are being

25 litigated through this bankruptcy process.



1           As you can see, in terms of objections and  
2           my overriding concern is that anything that should  
3           come out of this needed to be legal. So that's  
4           where I did basically -- rather than specifically  
5           even considering contingencies on one area or  
6           another because I viewed that as a troublesome area  
7           to say should there -- if you put one contingency  
8           could you end up with 15 contingencies versus saying  
9           the overriding concern is that this plan be legal  
10          and that's already provided for under federal  
11          bankruptcy law.

12 Q.   Was it your understanding that you could have placed

13 just one contingency on the filing which is that the

14 city could not seek to cut accrued pension benefits?

15 A. Again my concern is --

16 Q. I'm not asking your concern.

17 A. Yes.

18 Q. Was it your understanding that you if should chosen

19 to could have placed just one contingency?

20 A. Yes.

21 Q. Okay. Let me now refer you to the last sentence of

22 the paragraph that says, quote, federal law already

23 contains the most important contingency, a

24 requirement that the plan be legally executable.

25 And then it cites 11 USC 943 little B in parens,

1 four in parens, end of sentence, end of quote.

2 What was your understanding if you had one

3 as of July 18th when you signed this letter of what

4 11 USC 943 B 4 was?

5 A. The statement was my primary concern. I had very

6 good legal counsel, my legal advisors, work on the

7 citation. They thought it would be helpful.

8 Q. Okay. So whose -- I should have asked you earlier.

9 Who prepared this letter that's the July 18th

10 letter?

11 A. I did in conjunction with my legal counsel.

12 Q. Okay. Was it just you and legal counsel that

13 prepared the letter?

14 A. Yes.

15 Q. Okay. And so it was legal counsel that suggested

16 putting in this citation to section to 943 B 4?

17 A. Yeah.

18 Q. And whose idea was it that to say that federal law

19 already contains the most important contingency, a

20 requirement that the plan be legally executable?

21 Was that your idea to put that in or was

22 that legal counsel's?

23 A. I'm not sure if we're getting into an area where

24 this would be more attorney-client privilege.

25 MS. NELSON: Absolutely. In terms of

1 actual analysis of what was going on, it's  
2 attorney-client privilege. The letter stands for  
3 itself.

4 BY MR. DeCHIARA:

5 Q. Did you think that making the -- the requirement  
6 that the plan be legally executable was more  
7 important than protecting the pensions of the  
8 employees and retirees of the city of Detroit?

9 A. I don't view those as conflicting statements. I  
10 view that as the legal process there are legal  
11 questions that needed to be addressed and the plan  
12 needed to be legal. Just what it says.

13 Q. Did you -- why did you within two days of receiving

14 the July 16th letter issue your response? Why

15 didn't you -- if it was a major decision as you said

16 why didn't you wait longer?

17 A. That was an appropriate time period. When I got the

18 letter I actually said I was going to wait some time

19 in terms of a day or two to look at it. And in fact

20 I did.

21 Q. Did you speak to Mr. Orr about the timing of when

22 the bankruptcy petition should be filed?

23 A. Again, we had -- there were general discussions,

24 yes.

25 Q. And was it more than one discussion with Mr. Orr on

1      that subject?

2   A.    Yes.

3   Q.    And were these -- were any of these in the presence

4        -- outside the presence of legal counsel?

5   A.    No.

6   Q.    I'd like to read to you from the transcript of the

7        deposition that Mr. Orr gave in this case on

8        September 16th, 2013, and I'm going to read from

9        page 210 of the transcript beginning line nine.

10           And this is Mr. Orr's testimony. It says,

11        quote, I think we generally -- and he's referring to

12        discussions with you, Governor Snyder. He says,

13 quote, I think we generally discussed the ongoing  
14 operational restructuring, the status at a very high  
15 level, the Governor, you know, we don't -- we  
16 typically do not discuss how many meetings, who  
17 attended, what was said, went back and forth, it was  
18 just a very high level of how things were going with  
19 the restructuring efforts.

20 And that the lawsuits, this is just with  
21 the Governor, were beginning to create the risk that  
22 we would lose the initiative, and I might be unable  
23 to discharge my obligations under 436, end quote.

24 Did you have a one on one conversation just  
25 with Mr. Orr as he testified in which you discussed



1 certain lawsuits beginning to create a risk that

2 Mr. Orr would lose the initiative and might be

3 unable to discharge his obligations under 436.

4 A. Yeah, I'm not sure what time frame you're talking to

5 with respect to he did mention that you were giving

6 me some quote.

7 Q. Let me represent that the questioning put the time

8 frame as best as I can tell as between July third

9 and July 17th 2013.

10 Did you have a one on one conversation with

11 Mr. Orr during that time frame in which you

12 discussed certain lawsuits in connection to when the

13 bankruptcy filing should take place?

14 A. I don't recall that.

15 Q. Okay. Do you dispute Mr. Orr's testimony that he

16 had that discussion with you?

17 A. I -- I have -- I don't recall any discussion of

18 lawsuits. We would talk about how is he doing in

19 terms of the position, you know, the challenges, the

20 stress and operational issues when we did our one on

21 ones.

22 Q. Is your testimony that Mr. Orr is wrong when he

23 testified that this conversation with you occurred

24 or is your testimony that it might have occurred,

25 you just don't remember?

1 A. I wouldn't dispute him but I clearly don't recall

2 that.

3 Q. Okay. You were aware of certain lawsuits that were

4 being filed against Mr. Orr in the time period of

5 July -- the first half of July of 2013, correct?

6 A. Yes.

7 Q. Okay. And were you aware of that in those lawsuits

8 injunctive -- interim injunctive relief was being

9 sought?

10 MS. NELSON: I'm going to object because it

11 mischaracterizes -- and I'm not exactly sure what

12 lawsuits you are referencing. In that time period

13       there was only one lawsuit find against Mr. Orr, and

14       that was general retirement system. I believe and

15       perhaps we can correct for the record. On the

16       Flowers and Webster lawsuits were only against the

17       Governor and the treasurer.

18 BY MR. DeCHIARA:

19 Q.   Okay let me just question the Governor on the best

20       of his memory. Governor, were you aware of there

21       being one or more lawsuits against Mr. Orr?

22 A.   Again I'm not sure which party was being suited but

23       there were lawsuits yes.

24 Q.   Okay. You were aware -- and let me speak more

25       generally. You were aware that in the first part of

1 July there were certain lawsuits filed concerning  
2 issues related to Detroit's ability to file for  
3 bankruptcy?

4 A. Yes.

5 Q. Okay. And in those lawsuits were you aware --  
6 strike that.

7 Were you aware that in those lawsuits there  
8 was interim injunctive relief sought by the  
9 plaintiff or plaintiffs?

10 A. Yes.

11 Q. Okay. And did that knowledge have any impact on  
12 your view about when the bankruptcy petition should

13 be filed?

14 A. No.

15 Q. Okay. Did you ever discuss with anyone those --

16 apart from your legal counsel the fact that in one

17 or more of those lawsuits there were requests for

18 interim injunctive relief?

19 A. Again, those discussions would have been subject to

20 attorney-client privilege.

21 Q. Well again without the legal conclusion, did you

22 have any discussions about that subject outside of

23 discussions with legal counsel?

24 A. They're discussions about the lawsuits.

25 Q. Yes.

1 A. Yes.

2 Q. We're speaking past each other.

3 A. Yeah.

4 Q. Did you have any conversations outside of the

5 presence of your legal counsel about the fact --

6 A. No legal.

7 MS. NELSON: Let him finish the question

8 again so that it's clear on the record what he's

9 asking.

10 THE WITNESS: Okay.

11 BY MR. DeCHIARA:

12 Q. Okay. Apart from any conversations you may have had

13 with your legal counsel, did you have any  
14 discussions with anyone else about the fact that in  
15 these lawsuits there were requests for injunctive  
16 interim relief?

17 A. In any meeting legal counsel would have been  
18 present.

19 Sorry, there's a lot of attorneys involved  
20 here.

21 Q. Goes with the territory.

22 MR. WERTHEIMER: We can all agree on that.

23 BY MR. DeCHIARA:

24 Q. Are you aware that -- this is going back a few  
25 months. On January 29th, 2013 there was a meeting



1 at which various law firms made a pitch to be hired  
 2 by the city of Detroit as their restructuring  
 3 counsel?

4 A. Could you repeat that.

5 Q. Were you aware that on or about January 29th, 2013  
 6 there was a meeting at which various law firms made  
 7 a pitch to be hired by the city of Detroit as the  
 8 city's restructuring counsel?

9 A. I couldn't speak to the specific date but generally,  
 10 yes.

11 Q. Okay. You were aware that there was this meeting at  
 12 which certain law firms made pitches?

13 A. Yeah and I wasn't sure it was one meeting or more

14 meetings because I was not part of that process, but

15 I was aware the city of Detroit was talking to law

16 firms.

17 Q. Okay. Richard Baird was part of that process,

18 correct?

19 A. I'm -- I'm not sure. I don't know.

20 Q. You don't know whether Richard Baird attended any

21 meetings at which --

22 A. I know he attended some meetings involving that

23 process, but I don't know if he had attended that

24 meeting.

25 Q. Okay. Well, do you know whether Richard Baird

1 attended a meeting at which the Jones Day law firm

2 made a pitch to be hired by the city of Detroit?

3 A. Yes.

4 Q. Okay. And did Mr. Baird speak to you about the

5 meeting at which Jones Day made a pitch to be hired

6 by the city of Detroit?

7 A. I don't recall him coming to me about the meeting

8 per se with Jones Day and what they pitched.

9 Q. Did he ever show you what's been referred to in this

10 case and other depositions as a pitch book, a series

11 of slides that Jones Day presented at that meeting?

12 Did he ever show you that any document like that?

13 A. I don't recall that.

14 Q. Okay. Let me show you a document I'll ask to have

15 marked as Exhibit 5.

16 Number 5 marked for identification.

17 BY MR. DeCHIARA:

18 Q. Governor, have you ever -- let me just identify for

19 the record that Exhibit 5 is a document that says

20 presentation to the city of Detroit, Detroit,

21 Michigan, January 29, 2013. There's date stamp DTMI

22 00128731.

23 Governor have you ever seen Exhibit 5?

24 A. I don't recall it.

25 Q. Okay. Did Mr. Baird speak to you about -- strike

1       that.

2               Did Mr. Baird express to you any views he

3       had about whether or not the city should hire Jones

4       Day?

5 A.   I don't recall that.

6 Q.   Okay. Do you remember speaking to him about that

7       subject about whether or not the city should hire

8       Jones Day?

9 A.   No.

10 Q.   Okay. Did Mr. Baird ever speak to you about whether

11       Kevyn Orr should be the emergency manager of

12       Detroit?

13 A. That was the context that I spoke to Mr. Baird

14 about. It was not being the emergency manager but

15 being a candidate for emergency manager.

16 Q. Okay. And were these discussions you had with

17 Mr. Baird about the subject of Mr. Orr's candidacy,

18 where did those discussions take place?

19 A. I don't recall.

20 Q. They phone calls or face to face meetings?

21 A. That's why I don't recall. I do many meetings and

22 phone calls.

23 Q. Do you recall with any certainty whether legal

24 counsel was present in any discussions you had with

25 Mr. Baird concerning the candidacy of Mr. Orr?

1 A. They very likely could have been for some of those

2 but I don't recall.

3 Q. Okay. Is it likely that there were at least

4 somewhere it was just you and Mr. Baird speaking?

5 A. Yes.

6 Q. Okay. Do you recall in any of the meetings you had

7 with Mr. Baird what you two discussed when it was

8 just the two of you about Mr. Orr's candidacy?

9 A. Generally what I would say is I was not involved in

10 this process at all other than understanding that

11 generally the city of Detroit was looking for

12 attorneys and that in that context Mr. Baird

13 identified Kevyn Orr as a potential candidate to be  
14 emergency manager, and he brought up the concept of  
15 going to the firm at some point and asking their  
16 permission to -- on whether he could speak to him  
17 separately in that capacity.

18 Q. Did Mr. Baird when he said that to you indicate why  
19 he thought Mr. Orr should be contacted and spoken to  
20 as a potential candidate?

21 A. Very impressed with his credentials and  
22 presentation.

23 Q. Did Mr. Baird say anything, discuss with you at all  
24 the views that Jones Day had or that Mr. Orr had  
25 about Detroit's pension liabilities?



1 A. I don't recall any.

2 Q. Okay. Did Mr. Baird speak to you at all about any

3 views that Jones Day may have had or that Mr. Orr

4 may have had about the Michigan constitution?

5 A. I don't believe so.

6 Q. After Mr. Orr was appointed as emergency manager you

7 had regular meetings with him correct?

8 A. Correct.

9 Q. And those were formal meetings with legal counsel

10 and staff present, correct?

11 A. Yes and informal meetings.

12 Q. Okay. At the informal meetings, were legal counsel

13 present?

14 A. No.

15 Q. Okay. Who was present at the informal meetings?

16 A. Generally, it was just Kevyn and myself.

17 Occasionally it could have been Dennis Muchmore with

18 Kevyn and I. That would be much less frequent and

19 more recently Greg Tedder.

20 Q. Who was the people you just named?

21 A. Dennis Muchmore is chief of staff.

22 Q. Who was the other person?

23 A. Greg Tedder is essentially the person from our

24 office that's working with Kevyn Orr on his staff.

25 Q. Okay.

1 A. As a liaison between the Governor's office and the  
2 city of Detroit.

3 Q. Okay. In any of the informal meetings, as you  
4 refer to them, were Mr. Muchmore and Mr. Tenor  
5 acting as --

6 A. Tedder. Tedder. T-E-D-D-E-R. Sorry, I'm --

7 Q. Okay. Thank you.

8 A. A lot like being out of state with the names.

9 Q. At any of the informal meetings were Mr. Muchmore  
10 and Mr. Tedder acting in the capacity as attorneys  
11 for the city or the state?

12 A. No.

13 Q. Okay. Would there -- how often were these informal

14 meetings?

15 A. As I said, most of the meetings were just Kevyn Orr

16 and myself. The frequency was probably about every

17 two weeks or so.

18 Q. Over what period of time?

19 A. Since his appointment as emergency manager and when

20 I say two weeks it wasn't necessarily every two

21 weeks but that was sort of the normal schedule

22 process.

23 Q. When was he appointed emergency manager do you

24 remember the date?

25 A. March.

1 Q. Do you remember the date specifically?

2 A. Again, there's appointment dates, effective dates.

3 Q. Right. Gets confusing.

4 And up -- so it began -- these informal

5 meetings that occurred every two weeks or so began

6 in March and have they continued through the

7 present?

8 A. Yes.

9 Q. Okay. In the informal meetings you had with Mr. Orr

10 prior to July 18th, 2013, did you ever speak with

11 him about the issue of Detroit's pension

12 liabilities?

13 A. In those meetings, no.

14 Q. What did you speak to him about in those meetings?

15 A. Two general topics that were reserved for those

16 meetings. One is is just personally how he's

17 dealing with the position that he's in and in terms

18 of how he's interacting with staff, his family

19 challenges given that his family is in Washington

20 D.C.

21 So it was more as an advisor helper kind of

22 person to help him support through that process and

23 then on operational matters. Because the way it's

24 traditionally defined in our meetings. There are

25 three tracks that get discussed. One is the

1     bankruptcy process, one is the operational process,  
2     and the third is about what would happen post  
3     transition when he is no longer emergency manager.

4             And so the tracks discussed in those other  
5     meetings, the meetings we've just been discussing  
6     would tend to be on the operational track, and we  
7     wouldn't discuss matters on the bankruptcy track  
8     because again those should be reserved for where  
9     there was legal counsel present.

10  Q.   In the informal meetings, did you speak to Mr. Orr  
11       about the prospect of the city filing for  
12       bankruptcy?

13 A. Again those would have been in the bankruptcy track

14 meetings with legal counsel present. The

15 operational track meetings, the topics that would be

16 -- things that would be discussed potentially would

17 be there's a request for proposal for solid waste

18 garbage pickup. Topics like that that are important

19 to the citizens in terms of improved services.

20 Q. I'd like to read testimony by Mr. Orr from his

21 September 16th deposition. It's on page 84 of the

22 September 16th deposition. I'll begin on line 13.

23 Question: Now, at some point after you

24 became the emergency manager, did you have

25 discussions with the Governor about a chapter nine



1 filing to among other things get out of the pension  
2 obligations that the city owed? Mr. Shumaker:  
3 Objection to form. Answer: Yes, I believe so.  
4 Question: And when did those take place? Answer:  
5 Since becoming emergency manager on the 25th, I've  
6 had regular conversations with the Governor,  
7 typically weekly. I don't recall the specific  
8 conversations when they came up. I will say that it  
9 wasn't within our initial conversations.  
10 Did having heard me read Mr. Orr's  
11 testimony, let me ask you, Governor, did you have  
12 discussions with Mr. Orr about a chapter nine filing

13 to among other things get out of the pension

14 obligations that the city owed?

15 A. Again, in terms of getting out of pension

16 obligations, we had discussions that were these

17 larger meetings or meetings where counsel was

18 present that would discuss the prospect of

19 bankruptcy, and in many cases during the earlier

20 days it was how to avoid bankruptcy by going through

21 a negotiation process.

22 Q. In any of the informal meetings where counsel wasn't

23 present was there any discussion about a bankruptcy

24 -- a possible bankruptcy filing?

25 A. Again, the topic would come up but then we would try

1 to move back to operational issues and not get into  
 2 bankruptcy track issues because they were reserved  
 3 for the other meetings.

4 Q. But sometimes the topic came up at the informal  
 5 meetings?

6 A. It's something that would be out there because it  
 7 would most likely be in the context of press  
 8 accounts.

9 Q. In your informal meetings with Mr. Orr did the topic  
 10 come up the topic of Detroit's bankruptcy filing?

11 A. Did the word bankruptcy come up, yes. In terms of  
 12 discussing bankruptcy, no.

13 Q. Well -- okay. You interviewed Mr. Orr, did you not,

14 in the middle of February, 2013?

15 A. Yes.

16 Q. I believe you went out to lunch with him with

17 Mr. Baird?

18 A. I don't recall I went out to lunch with him but I

19 did interview him.

20 Q. Okay. Thank you. I may have misspoken.

21 In that meeting, did you speak about

22 Detroit's pension liabilities?

23 A. I don't recall.

24 Q. Did you speak about Detroit's possibility of Detroit

25 filing for bankruptcy?

1 A. Generally, yes.

2 Q. And what was your recollection of what you and

3 Mr. Orr said about that subject during the

4 interview?

5 A. A big part of it was making sure he understood the

6 history here; that this had been a process going on

7 for over two years and in a very methodical way.

8 Again, review teams consent agreement going through

9 that whole process and get the context and make sure

10 it was clear that bankruptcy was to be a last

11 resort; that the real question here is is there a

12 way to work this out in a mutual fashion. That

13 would be extremely challenging because there are a

14 large number of parties but we should make a very

15 good faith effort to work this out.

16 Q. Governor I'd ask you to focus on what words you said

17 in the interview on that subject --

18 A. Yeah.

19 Q. -- and what words Mr. Orr said. Do you have a

20 recollection of what words you said?

21 A. I just recounted generally this has been my position

22 that I wanted to really make it clear to him. I

23 also made it clear to him that I viewed it as he was

24 the -- in this context not in terms of just

25 bankruptcy but he was responsible for really helping

1     make those decisions for the city of Detroit in  
 2     terms of going through the negotiation process,  
 3     working with people, working through the process  
 4     that I was to be a supportive resource.

5 Q.   Did you speak to him about or did he speak to you in  
 6     that interview when a bankruptcy filing might take  
 7     place?

8 A.   Again, it would be after a good faith effort to try  
 9     to resolve these issues short of bankruptcy.

10 Q.   And who said those words that you just said? I'm  
 11     focusing on what was said in the interview. Did  
 12     someone say that?

13 A. I couldn't tell you who said them first, but we

14 both -- I believe my recollection is we would both

15 agree that was a very important criteria.

16 MR. DeCHIARA: Could we go off the record

17 for a second?

18 VIDEO TECHNICIAN: Off the record 10:47

19 a.m.

20 (A brief recess was taken.)

21 VIDEO TECHNICIAN: We're back on the record

22 at 10:58 a.m.

23 BY MR. WERTHEIMER:

24 Q. Governor, we met before. My name is Bill Wertheimer

25 and I represent the Flowers group of plaintiffs who



1       were plaintiffs in one of those early state court

2       lawsuits and are now creditors in the bankruptcy

3       proceeding.

4 A.   Uh-huh.

5 Q.   I'd like to ask you a couple of followup questions.

6       You were asked early on about conversations

7       you had with Mr. Bolger and Mr. Richardville?

8 A.   Uh-huh.

9 Q.   They are Republican political figures in Michigan;

10      are they not?

11 A.   Yes.

12 Q.   I just don't know who is who, so I'm not trying to

13 be pejorative.

14 A. No. Jase Bolger is speaker of the house and Randy

15 Richardville is the senate majority leader.

16 Q. And you did indicate that you had some conversations

17 with them early on about the possibility of Detroit

18 going into bankruptcy?

19 A. It wasn't in the context of Detroit being bankrupt.

20 I would try to give them regular updates on what was

21 going on over the last two or three years. For

22 example, going back to the review team, going on the

23 consent agreement, the whole process.

24 Q. In any of these conversations did either or both of

25 them ever communicate to you that they would not be

1 in favor of the state taking any responsibility for

2 the pension benefits of the city?

3 A. I don't recall.

4 Q. They might have -- one or both of them might have,

5 you just don't recall one way or the other?

6 A. I don't recall one way or the other.

7 Q. Okay. Fair enough.

8 You were asked a couple of questions about

9 your preparation for this deposition.

10 On how many occasions did you prepare?

11 A. I believe it was two. Or three. I'm sorry, three.

12 Q. Three. And when did they occur? When were they?

13 A. One was a couple weeks ago and then yesterday and

14 then this morning.

15 Q. And how long in total did you take to prepare, if

16 you can add up the time or we can go through the

17 three.

18 A. In terms of meeting with counsel?

19 Q. Yes. Yes.

20 A. Yeah.

21 Q. I'm not going to get into the content but I'd like

22 to know how long you met with your attorneys talking

23 about your deposition?

24 A. Yeah. No, that's fine. I just wanted to make sure

25 I ask.

1 Q. Yes.

2 A. I would say probably three hours, three and a half

3 hours.

4 Q. Total?

5 A. Total.

6 Q. Okay. Now, you were asked some questions about

7 conversations you had with Mr. Orr, and counsel read

8 you a question and answer which indicated that

9 Mr. Orr recalls a conversation after he became

10 emergency manager but before the chapter nine filing

11 where quoting, among other things, the talk was to

12 get out of the pension obligations that the city

13       owed.

14               Do you recall that subject coming up with

15       Mr. Orr after he became emergency manager and before

16       the chapter nine filing?

17 A.   Yeah, I don't recall that outside the context of a

18       meeting where we would have had counsel present.

19 Q.   Well --

20 A.   And again, I don't believe I would characterize it

21       as getting out of pension obligations.

22 Q.   But a discussion of the fact that you would -- it

23       would be easier to deal with the pension issue in

24       bankruptcy than not in bankruptcy? Did you have any

25       such discussions like that with Mr. Orr?

1 A. Again, those would have been an attorney-client  
2 meetings.

3 Q. For the record, Mr. Orr has testified as to those --  
4 that conversation at least one and has not asserted  
5 the attorney-client privilege, so it's my position  
6 that any attorney-client privilege would have been  
7 waived?

8 A. I don't recall anything outside those meetings.

9 Q. No, I understand. But what I'm suggesting to your  
10 counsel is that you should answer the question even  
11 as to those meetings because Mr. Orr who is  
12 asserting a common interest privilege with the state

13 of Michigan has answered that question and has not  
14 asserted the attorney-client privilege. So I'd ask  
15 you to answer the question as to the meeting the  
16 attorneys were present at?

17 MS. NELSON: I disagree with that analysis,  
18 number one. Number two the context in which that  
19 conversation occurred has not been explained, the  
20 foundation for it or when that meeting happened or  
21 who else was present.

22 I disagree that it waives attorney-client  
23 privilege, and having read the deposition it was  
24 very clear that Mr. Orr on the 16th of September and  
25 in his next subsequent deposition on October 4th was



1 very careful to preserve attorney-client privilege.

2 The question of whether there was a

3 specific discussion about getting out of pensions

4 was answered by the Governor just now. He did not

5 recall it in that context, so ask your next

6 question.

7 MR. WERTHEIMER: No, but he -- the Governor

8 excluded conversations with attorneys present. And

9 you're correct, Mr. Orr was very careful to assert

10 the attorney-client privilege at his deposition. He

11 did not assert it as to this question, and your

12 characterization that the context isn't clear is

13 wrong.

14 As counsel read the Governor, the question

15 was at some point after you became emergency

16 manager, did you have discussions with the Governor

17 about a chapter nine filing to among other things

18 get out of the pension obligations that the city

19 owed? Object to form. Answer: Yes, I believe so.

20 Question: And when did these take place? Answer:

21 Since becoming emergency manager, which is exactly

22 how I phrased my question.

23 That is between the time that Mr. Orr

24 became emergency manager and the time of a chapter

25 nine filing, do you recall any conversations

1 including conversations at which attorneys were  
2 present in which you and Mr. Orr discussed among  
3 other things getting out of the pension obligations  
4 that the city owed?

5 MS. NELSON: You can answer yes or no to  
6 that. That's the question. Yes, do you recall it;  
7 no, you don't recall it?

8 THE WITNESS: Well, I wish it was that  
9 simple. I sort of object. I don't believe I had  
10 discussions about getting out of pension  
11 obligations. We had discussions regarding pension  
12 obligations.

13           That would be yes to discussing pension

14       obligations and the context of getting out of --

15 BY MR. WERTHEIMER:

16 Q.   Okay fair enough.

17 A.   -- I'm not -- I would not accept that as a

18       characterization.

19 Q.   Let me rephrase the question then or ask another

20       question.

21 A.   Yes.

22 Q.   Do you recall any conversations you had with Mr. Orr

23       with or without attorneys present between the time

24       that he became emergency manager and the chapter

25       nine filing relating to the pension issue that he

1     might have construed in such a way that he would  
2     answer affirmatively a question about getting out of  
3     the pension obligations that the city owed?

4             MS. NELSON: Objection; form, foundation,  
5     calls for speculation. He can't testify about how  
6     Mr. Orr might have thought or formed or understood a  
7     question.

8             MR. WERTHEIMER: Go ahead you can answer  
9     Governor.

10            MS. NELSON: Go ahead.

11            THE WITNESS: I just want to make sure I  
12     understand it. You're saying whether it was

13 potentially covered by privilege or not.

14 BY MR. WERTHEIMER:

15 Q. Yes. Whether it's covered by privilege or not.

16 A. Was there a discussion or pension liabilities?

17 Q. Well, yes or any other kind of discussion where

18 somebody of Mr. Orr as sophistication might have as

19 a result of that conversation answered a question

20 affirmatively about getting out of pension

21 obligations?

22 MS. NELSON: Same objection. Go ahead.

23 THE WITNESS: Yes.

24 BY MR. WERTHEIMER:

25 Q. Okay. And what do you remember -- you said and what

1       did he say relative to that, as best you remember?

2           MS. NELSON: If you --

3           THE WITNESS: Okay.

4           MS. NELSON: You can answer that.

5           THE WITNESS: I'm just checking. I'm

6       sorry, you guys have been objecting enough I'm

7       trying to figure out --

8 BY MR. WERTHEIMER:

9 Q.   For what it's worth, after she makes an objection

10       unless she instructs you not to answer --

11 A.   Yeah.

12 Q.   -- she's making an objection for the record?

13 A. No I was just double-checking. Could you run it by

14 me one more time then and I won't look at her this

15 time.

16 Q. Feel free to look at her.

17 I'd like to know what you can tell me you

18 said and Mr. Orr said in the conversation you did

19 have, the one or more conversations you had between

20 the time he became emergency manager and the chapter

21 nine filing relative to the pension obligations that

22 the city owed?

23 A. Yeah, I would say there would be two or three pieces

24 to that. One is a concern about who is representing

25 the retirees.



1 Q. Who is saying what -- to the extent you can  
 2 Governor, and I understand you're not going to  
 3 remember exact words, but to the extent you can I'd  
 4 like you to break down what you're saying and what  
 5 Mr. Orr is saying so that we can identify who is  
 6 saying what to the extent you remember.

7 A. Okay.

8 Q. Go ahead.

9 A. Sure. Well let me start at the terms of the  
 10 discussion. One is is there is clearly a concern  
 11 for the retirees. These are people that worked for  
 12 the city for many years. And I shared this thought

13       that I am concerned about the retirees.

14             The second piece ties into what was the

15       situation about representing the retirees. Mr. Orr

16       brought that to my attention because he was having

17       difficulty finding people to represent the retirees.

18       The way it was described to me is there are a number

19       of unions that were not willing to potentially

20       represent the retirees versus their active members,

21       that all the retirees were not going to have

22       representation in some capacity during the

23       negotiation process with creditors.

24             And that was a concern because there are

25       many parties to this. This is very complex. We're

1     talking potentially 20,000 retirees. In terms of  
2     that, again, I'm kind of time frame, we had a  
3     general discussion about that being a problem. When  
4     it ultimately came down to looking at the bankruptcy  
5     -- possibility of a bankruptcy filing, one of the  
6     things that he brought forward and I really pushed  
7     was the issue about asking very quickly that there  
8     be representation for the retirees as part of the  
9     bankruptcy process because I believe it's important,  
10    and I've been public with that in addition to those  
11    private discussions, that it's very important that  
12    they have a seat at the table so their voice can be

13 heard during this process and they can have adequate  
14 legal representation. So that would be one track in  
15 terms of that.

16 In terms of the pension liabilities  
17 themselves there was discussion about the funding in  
18 terms of the actuarial assessment of the pension,  
19 the stated numbers according to the review team and  
20 the other reports was approximately three and a half  
21 billion dollars. Again, there was work to be done  
22 following that -- I can't remember Milliman or  
23 whoever was doing the report, to do an assessment,  
24 other people are doing assessments. There was  
25 evaluation of the pension plans and how the pension

1 plans were operated.

2 Again, there's many questions. Again,

3 there's other litigation going on about 13 month

4 checks.

5 Q. Okay. But it's pretty clear isn't it from the

6 question and answer that was posed to Mr. Orr that

7 he recalls a conversation in one way or another

8 where there's an advantage to a chapter nine filing.

9 He's not talking about I understand the advantage of

10 then you can deal with the retirees because you set

11 up a committee and you have someone to bargain with.

12 I get that. But he's answering affirmatively a

13 question that just ties the chapter nine filing to

14 getting out of pension obligations.

15 Do you recall any conversation you had with

16 Mr. Orr in any way, shape or form that related to

17 that subject, that is chapter nine would give you

18 some advantages vis-a-vis getting out of pension

19 obligations that another route would not have?

20 MS. NELSON: Objection; asked and answered.

21 Go ahead, answer it again.

22 BY MR. WERTHEIMER:

23 Q. Go ahead?

24 A. Yeah, the context of something that would -- could

25 be viewed as a positive during the process is it

1     could be -- there could be certainty as to  
2     resolution by going through a bankruptcy in the  
3     sense that the judge addressing the plan and  
4     approving the plan could resolve it as opposed to  
5     having a multiple continuing lawsuits that could go  
6     on even if it was done in a consensual fashion, if  
7     some party didn't agree or some party had a  
8     different version; that one of the potential  
9     advantages of bankruptcy again viewing bankruptcy as  
10    a last resort could be is there -- could be more a  
11    finality of a resolution to this issue as opposed to  
12    having lawsuits continue for multiple years.

13 Q. Do you recall anything anymore specific than that

14 that would relate at all to Mr. Orr's view that the

15 discussion related to getting out of the pension

16 obligations that the city owed or not?

17 A. Again, in terms of looking at it, there could be --

18 this is -- are there other options or alternatives

19 in terms of looking at the pension plans. Again

20 waiting for an assessment of how these reports come

21 back, and what I hope could be mediations during

22 this process. Are there other things possible in

23 terms of continuing the existing pension plans,

24 looking at alternatives to the pension plan versus

25 health care liabilities or other liabilities.



1 Again, this is where I view it as hopefully an open  
2 discussion that would reviewed by a judge because  
3 this then gets into legal opinions as to the  
4 relative class of different types of creditors. And  
5 this is beyond my area of expertise. One of my  
6 concerns about not going into bankruptcy, wanting to  
7 avoid it is I was concerned you could have less  
8 flexibility in bankruptcy than outside because if  
9 mutual parties agreed and everyone agreed you could  
10 have a resolution.

11 Q. Well, in terms of your background, you did -- you've  
12 graduated from law school, correct?

13 A. Thank you.

14 Q. I meant it -- I phrased it that way only because I

15 understand that you don't practice law or have never

16 practiced law.

17 A. Yes.

18 Q. Sorry for wording. Unintentional.

19 At the time you were talking to emergency

20 manager Orr between the time he's an emergency

21 manager and you file chapter nine --

22 A. Yes.

23 Q. -- you knew, did you not, that article nine section

24 24 of the state constitution existed?

25 A. Yes.

1 Q. And that it provided certain rights for pensioners?

2 A. Yes.

3 Q. Didn't you also know at that point in time that the

4 best way to reconcile article nine section 24 -- let

5 me rephrase it.

6 Didn't you know at the time you were

7 talking to Mr. Orr that bankruptcy was the only

8 place where you could at least even arguably, in the

9 words of Mr. Orr, trump that state constitutional

10 provision. Didn't you kind of know that as a

11 general matter?

12 A. No.

13 Q. Okay. Did you think there were other places where  
14 you could -- other ways in which you could trump  
15 article nine section 24 other than getting the  
16 agreement of the retirees which you've acknowledged  
17 had not happened and was going to be very difficult  
18 given trying to deal with thousands of people  
19 outside the bankruptcy arena?

20 A. I'm trying to see if that was a yes no question or  
21 you were asking.

22 (Reporter read pending question.)

23 MS. NELSON: Objection; form, foundation,  
24 use of the word trump. You can answer the question  
25 if you can.

1           THE WITNESS: Yeah, in terms of one area  
2       that this is a legal question that I thought would  
3       be good to get resolved and could be resolved inside  
4       or outside of bankruptcy. I don't believe it had to  
5       go to bankruptcy to solve the question, and that is  
6       in regard to what the constitutional provision  
7       actually says which treats it as a contractual  
8       obligation, which in many cases we've seen cases  
9       with emergency managers they could set aside  
10      contractual obligations.

11 BY MR. WERTHEIMER:

12 Q.   Well, let's move to that. If you were looking for a

13 legal answer, you knew as of July third or shortly

14 thereafter that you were going to get a legal answer

15 in state court; did you not?

16 A. I was not going to speculate as to the timing of how

17 state lawsuits get resolved.

18 Q. Well, you knew, did you not, that the Flowers

19 plaintiffs filed their suit on July third. You knew

20 that shortly after that; did you not?

21 A. Yes.

22 Q. I mean --

23 A. Or one of those.

24 Q. -- it was all over the press?

25 A. Yes.

1 Q. And that Webster and another group of individuals

2 filed suit the same day, July third, correct?

3 A. Yes.

4 Q. It was also all over the papers that the same day

5 that suit was filed Judge Aquilina signed orders to

6 show cause why injunctive relief should not issue

7 and scheduled those hearings for July 22nd.

8 You knew that at least generally, did you

9 not, that is that there was going to be a date at

10 which the judge would make a preliminary decision as

11 to the issues in front of her?

12 A. A preliminary decision on a injunction is much

13 different than an adjudication of a legal issue that

14 would be resolved through a court trial process.

15 Q. But you did know that there would be a state court

16 resolution -- that the issue you were concerned

17 with, that is the relationship between article nine

18 section 24 of the state constitution and these

19 efforts to try and bring the city back, were going

20 to be resolved in state court based on these

21 lawsuits if nothing else was done. Did you not?

22 A. That could take a year or longer to get that

23 resolution.

24 Q. I didn't -- I did not ask you any question about

25 length. I asked you whether you didn't know as



1 someone trained in the law and knowing that these  
 2 suits were pending and knowing kind of generally  
 3 what they were about, you knew that the state courts  
 4 were dealing with the issue?

5 A. I knew I would not get a short-term final answer.

6 Q. You did understand that in -- and then a few days  
 7 after those first two suits were filed, just so  
 8 we've got the record -- and your counsel is correct,  
 9 those two suits were against you as the Governor,  
 10 not personally, and the state treasurer.

11 And then a few days later the pension funds  
 12 or whatever the technical name is for them, filed a

13 lawsuit that did include Mr. Orr. Do you recall

14 that?

15 A. Yes.

16 Q. And then at that point there were multiple suits

17 pending?

18 A. Yes.

19 Q. Correct?

20 A. Yes.

21 Q. And did you understand that all each of those suits

22 dealt one way or another with article nine section

23 24 of the state constitution, that is the pension

24 issue?

25 A. Yes.

1 Q. Okay. Between the time that those suits were filed  
 2 and the filing of the bankruptcy, which is about two  
 3 weeks, plus a day or two, did you have any  
 4 discussions with anyone about what the likely  
 5 outcome of those cases would be on the merits; that  
 6 is on the issue of does article nine section 24  
 7 apply even if the state goes into bankruptcy?

8 MS. NELSON: I'm going to object to the  
 9 extent that it calls for a discussion of  
 10 conversations he had with his legal counsel as those  
 11 are attorney-client privilege.

12 BY MR. WERTHEIMER:

13 Q. Outside of conversations you had with attorneys

14 present, did you have any conversations -- well let

15 me ask specifically. Did you have any conversations

16 with treasurer Dillon without attorneys present

17 about what the chances were as to the results of

18 these state court suits?

19 A. No I don't recall.

20 Q. Did you have conversations with anyone else

21 excluding conversations you had either with

22 attorneys or with attorneys present between the time

23 those suits were filed and the filing of the

24 bankruptcy?

25 A. I'm sorry, without attorneys present?

1 Q. Without attorneys present.

2 A. Yeah, I don't recall.

3 Q. Okay. You did know, did you not, shortly after

4 those suits were filed it was all over the papers

5 that Judge Aquilina was going to hold a hearing on

6 whether to issue an injunction Monday, July 22nd;

7 did you not?

8 A. Yes.

9 Q. And the initial plan was to file the bankruptcy

10 Friday the 19th; was it not?

11 A. There was a timetable for communications that said

12 it would be on Friday the 19th.

13 Q. And that timetable came out of your office or was

14 done for you?

15 A. Yes.

16 Q. As the Governor of the state, correct?

17 A. Yes.

18 Q. And that timetable was written up on the 17th, was

19 it not, at least one version of it? I've got it

20 here as an exhibit. I can show you if -- I'm not

21 trying to --

22 A. No, I don't -- I -- that's fine. I would say yes.

23 Q. Okay. Fair enough. And let's just -- I'll move the

24 admission of Exhibit 6 Margaret.

25 MS. NELSON: May I see Exhibit 6.

1 MR. WERTHEIMER: That's the one I think you

2 took.

3 MS. NELSON: No, you gave me Exhibit 7.

4 MR. WERTHEIMER: I'm sorry, I apologize,

5 yes.

6 MS. NELSON: I don't have Exhibit 6.

7 MR. WERTHEIMER: You will.

8 MS. NELSON: And would you please show it

9 to the Governor.

10 MR. WERTHEIMER: Yeah, sure. Absolutely.

11 BY MR. WERTHEIMER:

12 Q. Okay.

13 A. Yes.

14 Q. That's consistent with your memory?

15 A. Yes.

16 Q. And this is the document or something like it is

17 what you were just referring to?

18 A. Yes.

19 Q. Would I be correct in reading the upper right V

20 71713 is indicating that this document was prepared

21 on that date. Is that what that is?

22 A. I can't speak to that.

23 Q. You don't know?

24 A. Yeah, I didn't do the document so I can't speak to

25 that.



1 Q. You -- this is a normal document that is used in

2 your role as Governor to deal with --

3 A. I would say this was not a normal circumstance so

4 this would not be a normal document.

5 Q. Okay. The only reason I ask that is I did see some

6 other kind of roll out documents; for example

7 there's a similar document is there not for the June

8 14th creditors proposal that Mr. Orr was coming out

9 with? There's a similar document from your end is

10 there not?

11 A. Yeah I'm not aware of that.

12 Q. Okay fair enough?

13 A. Yeah.

14 Q. So you don't know whether the 717 up in the upper

15 right is the normal place that the author of the

16 document would advise people reading it as to its

17 date of its origin?

18 A. Yeah I'd have to say I don't know.

19 Q. You don't know. In any event, the document gives a

20 lot of detail as to what's going to happen before

21 and after this filing, which the document assumes is

22 going to be on the 19th, correct?

23 A. Uh-huh. Yes.

24 Q. Now, there are -- were press reports that indicated

25 that the reason for the 19th filing was to have it

1 precede the 22nd hearing in front of Judge Aquilina.

2 Do you have any knowledge first or

3 secondhand as to whether that is true or not?

4 A. I don't recall that.

5 Q. Do you recall a reason that the 19th was selected as

6 the date that Mr. Orr would file bankruptcy?

7 A. One of the factors most likely was probably my

8 schedule, because this was a major media roll out,

9 in terms of availability.

10 Q. Okay.

11 A. At that -- the letter was coming and I wanted time

12 to contemplate and then we would look at the

13 schedule to say when is there a good opportunity to

14 have good communications.

15 Q. Leaving aside conversations you had with your

16 attorneys --

17 A. Uh-huh.

18 Q. -- in the days preceding the 17th, say, say earlier

19 that week?

20 A. Yeah.

21 Q. Were you privy to any conversations where the idea

22 was thrown out that if we have the filing on the

23 19th that would oust Aquilina of jurisdiction on the

24 22nd, you understand what I'm asking, or words to

25 that effect?

1 A. Yeah, I don't recall it.

2 Q. You don't recall?

3 A. Again, there would be -- if there were other

4 discussions it would be attorney-client privilege

5 but I don't recall even in that context.

6 Q. We know that in fact the filing was made on the

7 18th?

8 A. Uh-huh.

9 Q. Correct?

10 A. Correct.

11 Q. That would be an unusual circumstance, would it not,

12 that is that you put together this very detailed

13 roll out down to what's going to happen at 11 a.m. a

14 couple days later and what's happening at noon and

15 1:30. It would be rare in terms of your work as

16 Governor for a significant event like this for the

17 date to move at the last minute; would it not?

18 A. Well this is a unique circumstance.

19 Q. Yeah. On that we agree.

20 Was the unique circumstance the fact that

21 the litigants in the three cases were in court on

22 the 18th in front of Judge Aquilina in the afternoon

23 seeking emergency injunctive relief?

24 A. I signed my letter prior to that.

25 Q. It's not what I asked you Governor?

1 A. Well you did ask me. You said they were in the  
2 courtroom. Did then I act. And I acted prior to  
3 them being in the courtroom.

4 Q. No. Okay fair enough.

5 A change was made between the 19th and the  
6 18th as to the filing itself. You understand that?

7 A. Uh-huh.

8 Q. Correct?

9 A. Yes.

10 Q. And I'll represent to you that at Mr. Orr's

11 deposition he confirmed that the typed in date of

12 the 19th on the bankruptcy petition, the handwritten

13       eight was his handwriting.

14               Do you know anything about why the change

15       was made from the 19th to the 18th?

16 A.   Yes.

17 Q.   What do you know about it? Just tell me.

18 A.   I made the decision that I was comfortable in my

19       conclusion that it was appropriate to file.

20               When the letter came to me on the 16th in

21       terms of recommending bankruptcy, I had set aside to

22       say I wanted an extended period of time to review

23       and to contemplate the situation.

24               So I actually set aside enough time that

25       would have led to the Friday morning situation to



1 say I wanted more than one night to sleep on this  
2 because the importance of this act. And as I  
3 proceeded through the thought process to say do I  
4 concur, am I going to authorize the bankruptcy, I  
5 started discussions with my legal counsel on how we  
6 would prepare a letter, how we would go through that  
7 process and my thought process, and I felt I didn't  
8 need to wait.

9 I had made my decision, I had consulted  
10 with legal counsel, we had prepared a letter  
11 authorizing bankruptcy, and I said we should just go  
12 ahead and get this done.

13 Q. And as far as you know, that decision, the fact that

14 there was requests for immediate injunctive relief

15 on that day in state court had nothing to do with

16 moving up the time?

17 A. People showed up in state court after that and what

18 I would say is the consideration I had was the

19 filing of the lawsuits being filed in the prior week

20 or two weeks had some impact on my decision-making

21 process.

22 Q. Right.

23 A. And the reason I said that is because I could see

24 lawsuits being filed not only on pension issues but

25 could be filed by other creditors, by financial

1 institutions, by many other parties to say it is  
 2 clear there's a breakdown of what I believe were  
 3 good faith negotiations, and given that there is a  
 4 breakdown of good faith negotiations we were at that  
 5 last resort point.

6 And this is a financial emergency, I'm  
 7 concerned about the citizens of Detroit and I was  
 8 going to move forward with this because I'm stepping  
 9 up for the citizens of Detroit and Michigan.

10 Q. You've talked generally about the lawsuits and the  
 11 role they played?

12 A. Uh-huh.

13 Q. I'm trying to get your recollection specifically as

14 to the fact that parties were in court on the 18th

15 and that the pension board was there formally with a

16 request for an injunction that day?

17 A. That was after the fact and I don't speculate on

18 what happens in court hearing.

19 Q. What is your basis for saying that that was after

20 the fact?

21 A. Well you told me that.

22 Q. No.

23 MS. NELSON: I'm going to object at this

24 point. He's asked and answered. Your question was

25 was the unique situation the result of the fact that

1 attorneys were in the courtroom seeking a T R O and  
 2 he answered no and he signed the authorization  
 3 before the attorneys were in the courtroom.

4 So what is it that you're now asking? He's  
 5 already answered that question, so asked and  
 6 answered.

7 MR. WERTHEIMER: Are you done.

8 MS. NELSON: I'm done.

9 MR. WERTHEIMER: Okay.

10 BY MR. WERTHEIMER:

11 Q. Do you have any -- are there any documents that the  
 12 state has that can confirm the time of day that your

13 letter was signed on the 18th? Do you know?

14 A. I'm happy to attest when I signed that.

15 Q. You already have.

16 A. I'm under oath. I signed that.

17 Q. What time did you sign it?

18 A. I signed it in the afternoon.

19 Q. What time in the afternoon?

20 A. It was earlier rather than later, but I don't have

21 the specific time.

22 Q. Okay. I believe the pension board had filed their

23 papers the day before and were scheduled to go into

24 court that afternoon. So it was out there that at

25 least in one of those lawsuits that a request was

1 going to be made that afternoon?

2 MS. NELSON: Objection.

3 MR. WERTHEIMER: And you move up your

4 filing -- or you moved up -- well the filing was

5 moved up from the 19th to the 18th.

6 MS. NELSON: Objection; assumes facts not

7 in evidence. There had not been any motion filed.

8 If you're referring to the general retirement system

9 case, that was filed on the 17th but there had not

10 been a T R O filed with the complaint. And that was

11 not filed until late in the afternoon on.

12 MR. WERTHEIMER: Margaret.

13 MS. NELSON: I'm correcting your facts.

14 There had not been a T R O filed the day before when

15 the general retirement system complaint was filed.

16 MR. GALLAGHER: Objection to counsel's

17 testimony.

18 MS. NELSON: I'm objecting to form and

19 foundation and speculation.

20 MR. WERTHEIMER: No you're providing

21 testimony and you're providing facts which are not

22 accurate.

23 MS. NELSON: Well you are too

24 Mr. Wertheimer. So if you're going to ask

25 speculative inappropriate questions at least have



1     your facts correct. So my objection is form,  
2     foundation, calls for speculation.

3             The Governor has answered this question in  
4     terms of his understanding of the timing.

5             MR. WERTHEIMER: Margaret I would not  
6     otherwise testify but I will tell you that the  
7     pension board was in front of Aquilina in the  
8     morning and that I drove from Detroit to Lansing and  
9     got there about three in the afternoon; that the  
10    AG's office asked us to please delay and we ended up  
11    in front of Judge Aquilina eight minutes after the  
12    bankruptcy petition was filed, and I'm entitled to

13 find out from the Governor whether all that is

14 coincidental. Now, if you're done, I'll ask --

15 MS. NELSON: No. I will correct you then

16 also because the AG's office did not learn of the T

17 R O applications and anybody coming to court until

18 after 3:00 in the afternoon. It was approximately

19 3:05 when I received the phone call that attorneys

20 were coming to court to present motions for T R O to

21 the judge. There was no conversation or information

22 about anything being filed that morning. It was

23 after 3:00 when the call was made to our office and

24 attorneys were sent over to respond if appropriate.

25 BY MR. WERTHEIMER:

1 Q. What time did you sign on the 18th Governor?

2 A. Again the specific time -- one of the ways to look

3 at that is I would have signed it prior to the email

4 transmission to Kevyn Orr.

5 Q. And do you recall when the email transmission was?

6 A. No, but that's --

7 Q. That's somewhere that we can find out?

8 A. Yes. Yes.

9 Q. Okay. Fair enough. When was it that attorney

10 general Schuette called you to let you know what

11 legal position he was going to be taking in the

12 bankruptcy? He filed it August 19th if that helps?

13 A. It would have been a couple -- again within 2 or 3

14 days before that.

15 Q. I take it sounds like it was a courtesy call?

16 A. It was a courtesy call because we have a working

17 relationship.

18 Q. Had you ever consulted with attorney general

19 Schuette about this issue of whether article nine

20 section 24 would apply in bankruptcy before that

21 courtesy call?

22 A. I don't recall.

23 Q. You may have?

24 A. I don't recall.

25 Q. Do you recall whether when attorney general Schuette

1      made his position public or when he told you about

2      it that you were surprised in any way? In other

3      words was it news to you at that point that the

4      attorney general was going to take the position that

5      article nine section 24 applied in bankruptcy.

6 A.   I would say -- could you repeat the question.

7 Q.   Do you recall whether --

8 A.   Yeah.

9 Q.   -- you knew any time before this courtesy call that

10      the attorney general's position was that article

11      nine section 24 applied in bankruptcy; in other

12      words, that bankruptcy would not trump it? But that

13       rather according to the attorney general, emergency

14       manager Orr would be required to propose a plan

15       consistent with article nine section 24?

16               Did you know that or anything like it any

17       time before he made this courtesy call to you?

18 A.   Yeah, not being difficult. I started becoming more

19       aware as the call was being scheduled. Why was the

20       attorney general wanting to talk, because I was out

21       on the road.

22 Q.   Okay so you may have learned just before?

23 A.   Again, it's like I was traveling in the upper

24       peninsula, as I recall, and I need to talk to the

25       attorney general. That gets my attention.

1 Q. You knew before this that this was a serious issue,

2 did you not, that is how -- what's the interplay

3 between the state constitutional provision and any

4 potential filing. As a general matter you knew that

5 did you not?

6 A. Yes.

7 Q. Did you ever consult with the attorney general about

8 that?

9 A. Not directly.

10 Q. Did you consult indirectly?

11 A. Again, my legal counsel may have had discussions. I

12 didn't participate in those.

13 Q. Do you recall asking either directly or indirectly

14 for the attorney general's opinion?

15 A. I don't recall.

16 Q. Could you identify Exhibit 7 for me?

17 A. This is an email from Greg Tedder to me regarding

18 Power Point presentation that Kevyn Orr was going to

19 use at part of his 45 day plan that he was going to

20 do I believe from later on it appears two public

21 meetings.

22 Q. And would I be correct in reading it as indicating

23 it that you were involved in detail to the extent

24 that you didn't like a particular slide, that is

25 slide 22?



1 A. I believe if my email is incorporated in this that

2 they --

3 Q. I think it is?

4 A. Yeah. They sent me the Power Point presentation and

5 I made a very brief review and just gave them three

6 points of feedback.

7 Q. And those are indicated on the exhibit?

8 A. Yes.

9 Q. Okay. Do you recall communications you had with

10 treasurer Dillon in early July after the suits were

11 filed but before the bankruptcy?

12 A. I don't recall.

13 MS. NELSON: Which one is which?

14 MR. WERTHEIMER: Eight is July 8th.

15 BY MR. WERTHEIMER:

16 Q. Since we're doing it this way, why don't you take a

17 look at exhibit 8 Governor, please, it's a July 8

18 email that was produced in discovery from treasurer

19 Dillon to you.

20 Might as well just read it and then I'll

21 ask you a question or two about it?

22 A. Okay. Want me --

23 Q. Yes. If you would just read it to yourself?

24 A. Thanks I was trying to figure out.

25 Q. That's fine. I understand.

1 As to the July 8, email, do you recall

2 receiving it?

3 A. Yes.

4 Q. Do you know what -- can you explain to us what the

5 reference is to the pension fund recent suits

6 against he and you. Is that a reference to the

7 suits we've been talking about?

8 A. I would assume so but I can't definitively say that

9 because I didn't write the email.

10 Q. Fair enough. Did you talk to treasurer Dillon about

11 it?

12 A. Yes I believe so.

13 Q. Did the conversation relate at least in part to

14 those lawsuits?

15 A. No. Well, it was really he was just re -- as I

16 recall, he was recalling what's in that second

17 paragraph, just to say that there's an issue here,

18 that the consultants were coming up with a different

19 answer.

20 Q. And he was indicating that pensions -- the

21 consultants were saying that pensions were going to

22 have to be cut significantly; was he not?

23 A. Again, yes.

24 Q. Okay. And you knew at that point in time, did you

25 not, that the only practical way you were going to

1 be able to cut those pensions would be by filing a  
2 chapter nine; did you not? At that point, in other  
3 words, July 8 treasurer Dillon tells you we're going  
4 to have to cut pensions significantly. You knew  
5 that that meant you've got to file chapter nine; did  
6 you not?

7 A. I wouldn't necessarily conclude that. I would in  
8 fact cite the second email you gave us, Exhibit 9  
9 toward the bottom where the bottom paragraph second  
10 sentence and third sentence in my view, which is  
11 Andy Dillon speaking, it's way too early in the  
12 process to respond to hypothetical questions, remain

13 in many ways at the informational stage.

14 Q. Isn't that just his effort to kind of deal with the

15 politics and say there's no reason you have to get

16 out there publicly and say that pensions are going

17 to be reduced?

18 A. Not necessarily. Again this is --

19 Q. Isn't that one reading of his --

20 A. I'm not going to speculate on his reading.

21 Q. All right.

22 A. I'm saying this is the information from consultants

23 that's in the early stages. It's informational and

24 he was giving me a heads up to know that there could

25 be an issue ultimately coming about because of work

1 of consultants that had not been fully reviewed and

2 vetted.

3 Q. Do you recall this second email?

4 A. Yes.

5 Q. Did you have any conversations with treasurer Dillon

6 about either of these emails at around this time?

7 A. As I mentioned earlier --

8 Q. I'm sorry go ahead.

9 A. I recall a phone call that night of the 8th after

10 the first email.

11 Q. Go ahead.

12 A. Sort of reiterating what's in the email saying he's

13 concerned about this, and then the second email said

14 sort of answered a lot of the questions to say that

15 the meetings going ahead and there's work to be done

16 that we're in the early stages.

17 Q. Okay. He's calling you?

18 A. I believe he called me.

19 Q. Okay?

20 A. I can't tell you whether I had to call him back or

21 not but I believe we had a conversation.

22 Q. He initiated it as a followup to his first email?

23 A. Yes.

24 Q. Then he sent you another email the next day?

25 A. Sort of answering a number of questions he raised



1 the night before and in the email.

2 Q. Fair enough. And there were no other lawsuits that

3 you can think of that were out there that he could

4 have been referencing as far as you know than the

5 three we've been talking about?

6 A. As far as I know.

7 Q. Okay. Just a couple more questions.

8 We have requested what's called a 30(b)(6)

9 deposition of the state; that is that the state

10 produce a witness -- one or more witnesses on

11 various issues. And on a couple of them the state

12 has indicated that they -- without designating you

13 as a 30(b)(6) witness and requiring you to do the

14 kind of preparation that would be involved with that

15 otherwise, that you would be the best person to ask

16 these questions?

17 A. Okay.

18 Q. So I'd like to ask the question exactly as it's

19 framed in the deposition notice and have you answer

20 that question as best you can.

21 A. Okay.

22 Q. Okay? The question is or the matter for examination

23 is the reason or reasons the Governor decided not to

24 place contingencies on this bankruptcy filing as

25 expressly permitted by section 18-1 of 2012 public

1     act 436, particularly why no contingency related to  
2     article 9 section 24 of the Michigan constitution  
3     was placed on the filing.

4             Can you answer that?

5 A.   Yes. I had -- I placed no contingencies because I  
6     had a concern that it would add complexity confusion  
7     or delay to the bankruptcy process given that this  
8     is an emergency situation. It's about taking care  
9     of the best interest of the citizens of Detroit.

10    And the reason I felt confident and comfortable in  
11    doing that act is why we reviewed -- I reviewed with  
12    my legal counsel and added that statement to say any

13 plan that has to come out of this process of the

14 bankruptcy has to be legally executable.

15 Q. That's going to be the next question, but okay.

16 Let me just ask a followup.

17 A. Sorry I was giving you --

18 Q. That's okay. We're on the same wave length.

19 At the time you authorized the filing, you

20 knew, did you not, that if you placed the

21 contingency relating to article nine, section 24 on

22 the filing it would make it more difficult for the

23 Detroit emergency manager to deal with the pension

24 issue; did you not?

25 A. I did not know that. That would be a legal

1 conclusion.

2 Q. But didn't you generally understand that? I

3 understand it technically may be a legal conclusion

4 but didn't you understand that if you had done a

5 contingency that said as to this 3.5 billion in

6 unfunded liabilities, the Michigan constitution says

7 you're going to have to -- you're not going to be

8 able to get any relief from that?

9 A. No, I didn't believe that. Again you asked my

10 question. I answered it.

11 Q. I'm just not sure I got an answer to that. Could

12 you -- and I apologize if I'm asking the same

13 question but --

14 A. No, I didn't believe -- again, I believed -- I

15 didn't -- state your question again so we can make

16 sure we get this.

17 Q. Didn't you understand at the time you authorized the

18 filing that if you had placed a contingency on the

19 filing telling the Detroit emergency manager that in

20 bankruptcy, for example, consistent with Schuette's

21 opinion that any plan he proposed would have to

22 recognize the applicability of article nine section

23 24.

24 Didn't you understand that if you did

25 something like that it would make emergency manager

1 Orr's job more difficult?

2 A. I did not consider that.

3 Q. Okay. What did you consider relative to not

4 including article nine section 24 as a contingency?

5 A. I viewed it as is that's something that the legal

6 questions were being appropriately framed by

7 lawsuits, by parties, by various people being

8 represented in this process, and that as Governor of

9 the state of Michigan I take my responsibility

10 seriously. It's to execute the laws of the state of

11 Michigan.

12 That these were multiple legal questions

13 that were being framed through multiple lawsuits

14 that were going to continue in the bankruptcy

15 process and I thought the best answer is the

16 judicial branch should be resolving these questions

17 to give me clarity as to best how to follow through

18 and implementing what comes out of this process.

19 Q. You did not check with attorney general Schuette at

20 the time you filed to determine what his view was as

21 to whether any contingency related to article nine

22 section 24 should put -- should be put on your

23 authorization did you?

24 A. I did not.

25 Q. The -- back to the 30(b)(6) notice?



1 A. Uh-huh.

2 Q. And you partially answered this but again I think it

3 would be helpful if I just read the question and you

4 answer it in full. And don't assume that you've

5 already answered part of it even though you have.

6 A. Okay.

7 Q. The reason or reasons the Governor included the

8 following statement in his 18 July 2013

9 authorization to commence chapter nine bankruptcy

10 proceeding, quote, federal law already contains the

11 most important contingency - a requirement that -- a

12 requirement that the plan be legally executable 11

13 USC section number. Can you answer that?

14 A. Yeah. I thought it was important to include that

15 because coming out of this process, I thought the

16 bankruptcy judge would go through an analysis and

17 make decisions that would come out with a plan that

18 was appropriate in the context of the legal process

19 in terms of answering these difficult legal

20 questions with certainty and resolution, so then

21 there could be a plan because this is a crisis.

22 The city of Detroit is having huge issues

23 and I wanted to make sure that it was being done in

24 a thoughtful fashion being reviewed by the judiciary

25 that then could be executed so we could provide the

1 best services to the citizens, take care of the  
 2 citizens of the state as quickly and as best  
 3 possible.

4 Q. At the time you put that contingency on --

5 A. I didn't put it a contingency.

6 Q. I'm sorry. At the time you -- I stand corrected.

7 At the time you made the reference to the federal  
 8 law contingency, shall we say --

9 A. Uh-huh.

10 Q. -- you knew, did you not, that emergency manager Orr

11 was publicly stating that federal law would trump

12 the state constitution. Trump. That that was the

13 word he used. It was in the Free Press, I believe  
14 in the News. It was all over. You knew that at the  
15 time you thought that this language about federal  
16 law being the most important contingency was put in  
17 your authorization; did you not?

18 A. Yes. But ultimately Judge Rhodes makes that  
19 decision, not Kevyn Orr.

20 Q. Did you know at the time that only -- that under  
21 chapter nine only the debtor can propose a plan?

22 A. Subject to approval by the judge.

23 Q. And the debtor is represented by Kevyn Orr, correct?

24 A. He represents the city of Detroit, yes.

25 Q. And you knew that the debtor was taking the position

1      that the pensions would have to be cut; did you not?

2    A.    That's not a correct statement. There had been no

3      plan proposed and there still has not been a plan

4      proposed. Until there is a plan proposed it would

5      be speculative on anything with respect to how the

6      city is going to present a plan.

7    Q.    Well, in the creditors plan back in June didn't

8      emergency manager Orr make very clear that to the

9      extent the pension benefits were funded that those

10     monies couldn't be touched which is legally of

11     course correct, but to the extent that they weren't

12     funded that the retirees would become unsecured

13 creditors like everybody else? Wasn't that part of

14 the June presentation?

15 A. The June presentation was to be part of a mutual

16 negotiation that would require consent of all

17 parties.

18 Q. Are you saying --

19 A. That was not a plan of adjustment and bankruptcy.

20 Q. Are you saying, Governor, that at the time you put

21 this provision in your authorization that you --

22 that there was some question in your mind as to

23 whether emergency manager Orr would honor or not

24 honor article nine section 24 in the bankruptcy?

25 Let me ask it a different way.

1 A. Okay.

2 Q. I think it was a little confusing.

3           Wouldn't you have had every reason to know

4       by the point you put this language in that emergency

5       manager Orr was going to propose a plan that did not

6       recognize the fact that pensions could not be

7       reduced because of article nine section 24?

8 A. I don't necessarily come to that conclusion because

9       a plan has not been presented.

10 Q. But this -- the guy who is going to present the plan

11       is publicly stating that federal law trumps article

12       nine section 24. You knew that did you not?

13 A. Yes.

14 Q. Wouldn't you suppose that that means that one of the

15 reasons -- one of the things that emergency manager

16 Orr is going to do in the bankruptcy is make an

17 argument to Judge Rhodes that federal law trumps

18 article nine section 24?

19 A. It is possible for him to make that argument. Again

20 I view this as legal speculation because there are

21 multiple mediations going on and multiple

22 discussions going on short of going to the judge and

23 asking for opinions.

24 Q. And you now know that that speculation is

25 inconsistent with the attorney general of the state



1 of Michigan's position which is that Orr has no

2 right to do that. You know that now do you not?

3 MS. NELSON: Objection; form, foundation.

4 What do you mean by speculation?

5 MR. WERTHEIMER: I was using the word the

6 Governor used, so I was using however he used it. I

7 was trying to be helpful Margaret.

8 BY MR. WERTHEIMER:

9 Q. You now know that the attorney general is of the

10 view that article nine section 24 applies in

11 bankruptcy?

12 A. He filed a brief to that effect.

13 Q. Okay. That's all I have thank you. I have no

14 further questions.

15 MS. NELSON: Okay.

16 MR. WERTHEIMER: Just take a minute. I

17 assume there will be other questions. I just want

18 to make sure that I'm done.

19 VIDEO TECHNICIAN: Off the record 11:55

20 a.m.

21 (A brief recess was taken.)

22 VIDEO TECHNICIAN: Back on the record at

23 11:59 a.m.

24 BY MR. WERTHEIMER:

25 Q. Let me show you what's been marked Governor as

1 Exhibit 10. Would you take a look at -- actually

2 you'll see the -- it's a transmittal letter of your

3 July 18 letter.

4 A. Uh-huh.

5 Q. Are you with me?

6 A. Yes.

7 Q. And you had indicated in your earlier testimony that

8 we should find the email transmission, and I'm

9 wondering if this is it. That is, is this the email

10 transmission where you communicate to emergency

11 manager Orr that you have signed the authorization?

12 A. Actually, it would have been much earlier, so this

13 is where -- just to clarify, I would say is I don't

14 -- I would have to double-check. Normally it could

15 have been by email, but it might have been faxed or

16 otherwise communicated, but I know it was much

17 earlier than this during the day because this says

18 7:47 at night.

19 Q. And it's within 13 minutes of what your roll out

20 communications plan indicates when you're going to

21 sign. That is, it indicates 8 p.m. correct?

22 A. Again, are you going to an earlier exhibit.

23 Q. I'm sorry. That exhibit with the roll out indicates

24 that you're going to actually sign the letter at 8

25 p.m. on the 18th, correct?

1 A. I signed it much earlier than that.

2 Q. That's not what I asked?

3 A. Yes.

4 MS. NELSON: Here you have it.

5 BY MR. WERTHEIMER:

6 Q. The communications roll out plan document indicates

7 that the filing was going to be on the 19th but that

8 you were going to sign the letter at 8 p.m. on the

9 18th, correct?

10 A. That's what this exhibit says.

11 Q. All right. And you indicated in earlier testimony

12 when I asked you if you could give me the time that

13       you signed the letter that I should look for the

14       email where you transmitted it. Did you not?

15 A.   Yes.

16 Q.   Okay. And I have found that email, have I not, or

17       someone on this side has found that email. And it

18       indicates that you sent the authorization letter to

19       emergency manager Orr at 7:47 p.m.; does it not?

20 A.   Yes. And that's why I wanted to clarify.

21       Apparently, our main transmission would have been

22       earlier in that day and it would have been done by

23       some other means.

24               So I'd want to clarify and correct that to

25       say we should go look to find out when the earliest

1 transmission was.

2 Q. I agree and I assume your counsel will do that and I

3 would make that request on the record that you

4 provide --

5 A. Yeah.

6 Q. -- whatever documentary support in whatever form it

7 is.

8 A. I apologize for having you go through an effort to

9 find --

10 Q. That's okay. We need to get straight on it and

11 that's fine. With that I have nothing further.

12 Thank you, Governor. I appreciate it.

13 MS. NELSON: To the best of my knowledge

14 it's in the production that we sent out.

15 MR. WERTHEIMER: Well, Margaret, no offense

16 but there's X hundred thousand --

17 MS. NELSON: No, I understand that but so

18 it has been produced. It's my understanding it has

19 been produced.

20 MR. WERTHEIMER: I am not suggesting that

21 it has not been produced, but it would be helpful

22 if --

23 MS. NELSON: Hold it. We have a hand up.

24 MR. WERTHEIMER: It would be helpful if you

25 could identify it for us. Right now all we have on



1 the record is 7:47 p.m.

2 MS. GREEN: I will say on the record that

3 that email was given to me by Jones Day in response

4 to the request made by retirement systems that the

5 city produce the email that transmitted the

6 authorization letter to Kevyn Orr. That was the

7 only email that was specifically produced.

8 MS. NELSON: Well, it might not have been

9 an email. It could have been a fax earlier in the

10 afternoon. So I guess we'll produce the document

11 that we have but obviously it was transmitted before

12 the filing and the filing was at 4:06 p.m.

13           So we'll find it. If you want us to search

14       for it, we will look amongst and get it to you. But

15       it could have been by other than an email.

16           MR. WERTHEIMER: Margaret, no offense we

17       want you to look for it. We now have on the record

18       that the Governor said it was in an email and we

19       have the email being 7:47.

20           MS. NELSON: He just corrected that he

21       indicated it could have been by some other means and

22       that it was earlier than that time frame.

23           MS. LEVINE: Let's talk for a second. We

24       have a lot of attorneys testifying. I think they

25       should stop it.

1 MS. NELSON: Correct.

2 MS. LEVINE: To the extent that there's a

3 transmittal other than this one that exists, we'll

4 ask the state to produce it to us. In response to

5 the direct request we've got the production from

6 Jones Day with regard to the transmittal.

7 MR. GADOLA: I'm confident we can do that.

8 MS. NELSON: That's fine.

9 MR. WERTHEIMER: Thank you.

10 MS. NELSON: Absolutely.

11 MR. WERTHEIMER: Thank you Governor.

12 THE WITNESS: All done?

13 MR. WERTHEIMER: All done.

14 VIDEO TECHNICIAN: Deposition's concluded

15 at 12:04 p.m.

16 MS. GREEN: The retirement systems join the

17 prior objection and reservation of rights placed on

18 the record earlier. We also received documents late

19 last night from the city, and those documents relate

20 to both city and state officials.

21 To the extent our rights have been

22 prejudiced and those documents are reveal a need for

23 further deposition testimony we hereby join the

24 prior objection placed on the record by counsel.

25 UNCERTIFIED ROUGH DRAFT

